INDEX.

Opinions by courts below 1
Jurisdiction of this court 2
Questions presented for review 2
Constitutional provisions and statutes involved 3
Statement of the case 4
Argument 7
Summary 7
Introduction—The Ohio Constitution and law 9
A. The creation of Ohio courts and the limitation of their power and jurisdiction by the Ohio Constitution 9
B. The general power of the legislature under the Ohio Constitution 12
C. The complete legislation on the subject of attorneys in Ohio 15
D. Prior Ohio court decisions on attorneys and the practice of law 17
Question No. 1 22
Question No. 2 28
Question No. 3 33
Conclusion 34

Appendix—
A. Opinion of Supreme Court of Ohio..... 37
B. Opinion and decision of Court of Common Pleas of Mahoning county 46
C. Constitutional and statutory provisions..... 54
United States Constitution, Fourteenth Amendment 54
Title 28, U. S. C., Section 1654..... 54
Ohio Constitution, Article I, Section 20..... 54
Ohio Constitution, Article II, Section 1..... 54
Ohio Constitution, Article IV, Section 2..... 55
Ohio Constitution, Article IV, Section 4..... 56
Ohio Constitution, Article IV, Section 18..... 56
Ohio Revised Code, Section 4705.01 through Section 4705.07 57
Ohio Revised Code, Section 4705.99 60
D. Entry of the Common Pleas Court of Mahoning county 60
E. Proceedings in the Ohio Supreme Court—
Assignment of errors 62
Order dismissing appeal 62
Judgment of Supreme Court of Ohio..... 63
Application for rehearing 63
Order denying application for rehearing..... 65
F. Petition of Ohio State Bar Association 66

Cases Cited.

Allen v. Smith, 84 Oh. St. 283..... 11

Brown, et al, v. Board of Education of Topeka, 347 U. S. 483 32

Cammer v. United States, No. 110, October Term, 1955 .....8, 23, 24, 30

COPY BOUND CL

Edelstein v. Kidwell, 139 Oh. St. 595 11
Ex Parte Garland, 71 U. S. 373 28
In re Applicants for License, 143 N. C. 1, 55 S. E. 635 ..... 26, 31
In re Hawke, 107 Oh. St. 349 ..... 17, 18
In re Isserman, 348 U. S. 1 34
In re Joseph, 152 Oh. St. 199 18
In re Levy, 348 U. S. 978 34
In re Lieberman, 163 Oh. St. 35 ..... 19, 29
In re Summers, 325 U. S. 561 ..... 25, 32
In re Thatcher, 80 Oh. St. 492 17
Kent v. Mahaffey, 2 Oh. St. 498 10
McMillen v. Diehl, 128 Oh. St. 212 30
Ostrander, Admr. v. Preece, Admr., 129 Oh. St. 625 ... 12
Railway Company v. Hurd, 17 Oh. St. 144 11
Sacher v. Association of Bar of New York City, 347 U. S. 388 34
Shelly, et ux v. Kraemer, et ux, 334 U. S. 1 32
Stevens v. State, 3 Oh. St. 453 11
State ex rel Bryant v. Akron Metropolitan Park District, 281 U. S. 74 14
State ex rel Hahn, 50 Oh. St. 714 10
State ex rel Flynn v. Board of Election of Cuyahoga County, 164 Oh. St. 193 ..... 20, 30
Yick Wo v. Hopkins, Sheriff, 118 U. S. 356 25

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

IN THE MATTER OF CHARGES AGAINST WILBERT B. McBRIDE FOR MISCONDUCT AS AN ATTORNEY.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

OPINIONS BY COURTS BELOW.

Petitioner, Wilbert B. McBride, respectfully prays that a writ of certiorari issue to the Supreme Court of the state of Ohio to review the decision and judgment of that court and the order denying petitioner's application for rehearing in Case No. 34,456, captioned *In re McBride*, opinion in which was rendered by the Supreme Court on January 11, 1956, and is reported in 164 Oh. St. 419 (App. A).

The proceeding against petitioner originated in the Court of Common Pleas of Mahoning county, Ohio, which

of the Supreme Court of Ohio; Article IV, Section 4 of the Constitution of Ohio, defining the jurisdiction of the Common Pleas Court of Ohio; and Ohio Revised Code Section 4705.02, the statute under which petitioner was tried and suspended. The legislative history of the latter statute is also pertinent.

Also involved in the consideration of this review are: the Federal statute governing the appearance in Federal courts of parties in person or by counsel, Act of June 25, 1948, c. 646, 62 Stat. 944, amended May 24, 1949, c. 139, Sect. 91, 63 Stat. 103, Title 28, U.S.C., Section 1654; Article I, Section 20 of the Ohio Constitution, pertaining to the rights retained by the people; Article IV, Section 18 of the Ohio Constitution relating to powers of courts in chambers; and the Ohio statutes (in addition to Ohio Revised Code Section 4705.02, supra) relating to the practice of law and attorneys, namely, Ohio Revised Code Sections 4705.01-4705.07, inclusive, and 4705.99.

The foregoing constitutional and statutory provisions are set forth in the appendix to this petition (App. C).

STATEMENT OF THE CASE.

This proceeding was commenced against petitioner in the Court of Common Pleas of Mahoning county, Ohio. The basis of the complaint filed by the committee, Paul E. Stevens, Raleigh P. Swanner and Henry C. Robinson, was the charge that petitioner as an attorney at law had been guilty of "misconduct and/or unprofessional conduct in office involving moral turpitude as such an attorney at law." That charge constitutes the grounds for discipline in the statute under which the proceeding was brought. Ohio Revised Code Section 4705.02 (App. C).

In essence the specifications in support of this charge were: First, that petitioner had personally solicited employment from one E. J. Sell; secondly, that petitioner offered to employ one Carl J. Scharrer to solicit professional employment; and thirdly, petitioner attempted to impede the investigation of the committee and vilified the committee with profanity.

The trial court entered judgment suspending petitioner from the practice of law for one year (App. D). Both the opinion of the trial court (App. B) and the entry show that the court took jurisdiction of and decided the proceeding under the existing statutes, Ohio G. C. Sections 1707 and 1708, now Ohio Revised Code Sections 4705.02 and 4705.03. The judgment was based solely upon the finding of moral turpitude as required by the pertinent statute, Ohio Revised Code Section 4705.02, then Ohio G. C. Section 1707.

The Court of Appeals for Mahoning county, Ohio, affirmed the judgment of the lower court without opinion by entry dated April 13, 1955.

The Supreme Court of Ohio in its decision (App. A) reversed the lower court's finding of moral turpitude, but affirmed the suspension on the ground that the lower court and other courts of Ohio had the inherent power to enlarge upon the statute.

Petitioner's constitutional claims presented in this review were set forth in his assignment of errors numbered 6 and 7 filed in the appeal to the Supreme Court of Ohio (App. E). The appeal of right was based upon that portion of Section 2, Article IV of the Ohio Constitution which provides that the Supreme Court of Ohio "shall have * * * appellate jurisdiction in all cases involving questions arising under the constitution of the United States

or this state * * *." Since that appeal was dismissed (App. E), the constitutional claims in the assignment of errors were denied.

A motion to certify record was also filed in the Supreme Court of Ohio. This motion was based upon that portion of Section 2 of Article IV of the Ohio Constitution which grants jurisdiction to the Supreme Court to review judgments of courts of appeals in cases of "public or great general interest." This motion was granted and upon review of the merits, the Supreme Court rendered its aforesaid decision and affirmed the judgment of the Court of Appeals on January 11, 1956 (App. E). Subsequently petitioner filed in the Supreme Court of Ohio application for rehearing, setting forth constitutional issues raised by that decision and involved in this review (App. E). The application was denied on February 1, 1956 (App. E).

ARGUMENT.

Summary.

In this proceeding against a licensed person in the state of Ohio, the jurisdiction of the lower court, the measure of the offense and the power and limits of punishment were all dependent upon the statute, Ohio Revised Code Section 4705.02. The charge against petitioner and the adjudication of the lower court were predicated solely upon that statute. The Ohio Supreme Court on appeal utterly destroyed the statutory standard and denied to the Legislature of Ohio the right to fix such a standard, although the court conceded that under the statute there was no ground for the proceeding against petitioner. Substituted for the ascertainable statutory standard was the indefinable and variable discretion of any state court. This was a denial of the expressed policy of the state in its Constitution and clearly outside of the jurisdiction and power of the Ohio Supreme Court. Not only was petitioner denied due process of law, but he was denied the equal protection of law afforded by the Constitution of Ohio and the laws enacted thereunder. Indeed he was denied the protection of *any* law whatsoever.

To compound the error, the Ohio Supreme Court accomplished such denial by the equally unconstitutional means of judicial legislation—enlarging upon an existing statute. The statute was not declared unconstitutional by the method provided in the Ohio Constitution; the court simply changed it and then added to it. Nor was this the end of it. The Ohio Supreme Court retroactively conferred jurisdiction and power upon a lower court which under the Ohio Constitution has only such jurisdiction as is provided "by law."

The only reason given for such an astounding decision was that petitioner is an attorney. The Ohio Supreme Court, in short, has denied to petitioner the protection of the Constitution and laws of Ohio on the ground that petitioner, an attorney, is not entitled to that protection. He is a so-called officer of the court without any rights and at the mercy of the courts. This is contrary to fundamental principles and decisions announced by this court, notably the recent decision of *Cammer v. United States*, No. 110, October Term, 1955, dated March 12, 1956, —— U. S. ——.

The issue, moreover, transcends that of the plight of petitioner, an attorney. If the Ohio Supreme Court can subject petitioner to the inherent discretions of any state court outside of the Constitution and laws, how far may this action outside of law extend? Unless this court grants this writ and reverses the decision, there is no end. The people of Ohio have spoken through their Constitution and Legislature. The policy is expressed. The Legislature has general power to make laws, subject only to constitutional limitations. Equal protection and due process of law both demand that such policy be applied to all citizens, lawyers included. The state Supreme Court, however, has denied that policy in this proceeding. This court is the last resort.

This petition, then, is a plea to uphold petitioner's right to be adjudged not under man, but under law. Petitioner does not attack the statute regulating his calling; he seeks to affirm it. He does not object to the provisions of the Ohio Constitution and the statutes enacted pursuant thereto; rather he insists that he as a state citizen is entitled to the benefits of and subject to the burdens of these provisions, no more and no less. Under the Fourteenth Amendment he is entitled to precisely that, no more and

no less. This court should affirm that fundamental and important right.

The right to practice law in federal courts has also been denied to petitioner. An attorney's status in all federal courts, so far as we know, is dependent upon his status in a state or territory. The Ohio statute, moreover, provides for notice to the federal courts of any suspension or removal. This decision, therefore, entirely outside of the state Constitution and laws, has stripped petitioner of a previously held privilege to appear in federal courts. This is an additional reason for reviewing and reversing that decision.

Introduction—The Ohio Constitution and Law.

The basic issue in this case is whether the Ohio Supreme Court may constitutionally legislate to enlarge upon an all-inclusive disbarment statute, and at the same time deny the right of the Legislature to fix a standard of conduct enacted therein. At the outset it is important to note that the Supreme Court of Ohio did not declare the statute unconstitutional. It simply held that courts of the state had inherent power to enlarge upon the statute. The Supreme Court thereupon changed the existing statute and added to it. In order to resolve that issue, it is necessary to outline and review the Ohio constitutional and statutory provisions and court decisions.

A. The Creation of Ohio Courts and the Limitation of Their Power and Jurisdiction by the Ohio Constitution.

The Ohio Supreme Court is created by, and its jurisdiction and power set forth in the Ohio Constitution in Article IV, Section 2 (App. C). That constitutional section specifically enumerated the cases and proceedings in which

the Ohio Supreme Court has original jurisdiction, and there is no mention of jurisdiction or authority over attorneys. The Supreme Court of Ohio pursuant to the foregoing section of the Constitution has held that the Supreme Court's jurisdiction and power are strictly limited to that provided in that section. In the case of *State ex rel v. Hahn,* 50 Oh. St. 714, the Supreme Court of Ohio stated and held at page 719:

> "Minshall, J. This court has original jurisdiction in *quo warranto, mandamus, habeas corpus,* and *procedendo,* and none other. It has no original jurisdiction in matters of injunction, and none can be conferred by the legislature. To assume it, in any case, is simply judicial usurpation."

In the case of *Kent v. Mahaffey,* 2 Oh. St. 498, the same court held as stated at page 499:

> "But to allow an injunction in a case pending in another court, would be an exercise of original and not of appellate jurisdiction. Now, the original jurisdiction conferred upon this court, by the constitution, is limited to *quo warranto, mandamus, habeas corpus* and *procedendo.* Art. 4, Sec. 2. This is the only original jurisdiction granted by that instrument, and it would be wholly inconsistent with, and, in a great measure, destructive of, the judicial system it ordains, to suppose that this original jurisdiction can be enlarged by law. It is true, there is no express prohibition against it; but none was necessary. *We can exercise only such powers as the constitution itself confers, or authorizes the legislature to grant. We can derive no power elsewhere.* * * * Now, as before said, the only original jurisdiction granted to us by the constitution, is that above mentioned; and the only jurisdiction that the legislature is authorized to confer upon us, as a court, is appellate jurisdiction." (Emphasis supplied)

The jurisdiction of the Court of Common Pleas in Ohio is limited strictly to that provided "by law." Ohio Consti-

COPY BOUND CL

tution, Article IV, Section 4 (App. C). The Supreme Court of Ohio has consistently so held. In the case of *Stevens v. State*, 3 Oh. St. 453, the court held and stated at page 455:

> "The constitution itself confers no jurisdiction whatever upon that court, either in civil or criminal cases. It is given a capacity to receive jurisdiction in all such cases, *but it can exercise none*, until 'fixed by law.'"

In the case of *Allen v. Smith*, 84 Oh. St. 283, the holding of the court is stated in syllabus 1 as follows:

> "The jurisdiction of the courts of common pleas of the state is, by force of section four of article IV of the constitution, fixed by statute."

In the case of *Edelstein v. Kidwell*, 139 Oh. St. 595, the Supreme Court stated and held at page 599:

> "Section 4, Article IV of the Constitution, provides that 'the jurisdiction of the Courts of Common Pleas and the judges thereof, shall be fixed by law,' that is, by legislative enactment. The Constitution authorizes the Legislature to confer jurisdiction on the court and the Legislature has acted under this authority. Mattone v. Argentina, 123 Oh. St. 393, 175 N. E. 603."

A further provision of the Constitution clearly indicating the intent of the people to prescribe the limits of judicial power is that found in Article IV, Section 18, Ohio Constitution (App. C), which provides in essence that the courts shall have such jurisdiction at chambers as may be directed *by law*. Not only has this limitation been recognized by the Supreme Court of Ohio, but it has further held that the jurisdiction and authority of a judge at chambers cannot go beyond the jurisdiction of the court to which he belongs. Thus in the case of *Railway Company v. Hurd*, 17 Oh. St. 144, the court stated at page 146:

> "Now, the provision of the constitution is, that the several judges of this court shall have and exercise

CLOSE IN CENTER

such power and jurisdiction at chambers as may be directed by law; and the question arises, whether a capacity is thereby conferred on the members of this court to receive at the hands of the legislature a chamber jurisdiction in causes pending in other courts, of which the judges of this court are not members. We all concur in answering this question in the negative."

At page 147 it stated:

"It follows that the jurisdiction of a judge at chambers cannot go beyond the jurisdiction of the court to which he belongs, or extend to matters with which his court has nothing to do."

On the same page it concluded:

"We are of opinion, therefore, that the constitution does not authorize a jurisdiction to be conferred upon or exercised by a judge of this court, *at chambers*, which is clearly withheld from the court itself."

B. The General Power of the Legislature Under the Ohio Constitution.

Section 1 of Article II of the Ohio Constitution vests the legislative power in the General Assembly (App. C). This provision has been interpreted by the courts to mean that the power vested is general and not limited. So long as legislative enactments do not contravene any constitutional prohibition, therefore, they are valid. In the case of *Ostrander, Admr., et al, v. Preece, Admr., et al*, 129 Oh. St. 625, the court stated at page 628:

"This power thus vested in the General Assembly is general and not limited. Baker v. City of Cincinnati, 11 Oh. St., 534, 542. The language of the Constitution is that 'The legislative power of the state shall be vested in a general assembly' and not that 'The general assembly shall have only such legislative power as is expressly conferred upon it by the Consti-

> tution.' So long as legislative enactments do not contravene any constitutional prohibitions they are valid."

In the same decision the Supreme Court of Ohio clearly pointed out that wherever the power of the Legislature to enact a given law is disputed, the only question is whether the exercise of that power is prohibited by the Constitution. In contrasting the general power of the Legislature with the limited power of the judiciary, the court stated at page 629:

> "Now what is the power of the judiciary with reference to legislative enactments? Its power to declare legislative enactments unconstitutional is not a superior power, neither one of veto nor of greater wisdom. It is rather a power burdened with a duty—a duty to determine in particular cases whether the Legislature has reached and passed the extreme boundary of its legislative power.
>
> For some time courts have been the target of public criticism for being 'too prone to find constitutional objections to legislation.' To curb this judicial power, Article IV, Section 2, was added to the Constitution of Ohio. It provides that 'No law shall be held unconstitutional and void by the supreme court without the concurrence of at least all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void.'
>
> The wisdom, policy, propriety or expediency of legislation is not subject to judicial inquiry. 'These are matters purely of legislative deliberation and cognizance. The judiciary can not substitute its judgment for the legislative discretion, unless, of course, there is a clear and palpable abuse of power.' 8 Ohio Jurisprudence, 'Constitutional Law,' Section 191, at page 292."

The aforementioned provision of the Ohio Constitution has been upheld by this court in the case of *State of Ohio ex rel E. H. Bryant v. Akron Metropolitan Park District*

for Summit County, 281 U. S. 74. In the latter case this court held that the statute involved was passed pursuant to a state constitutional provision and did not deny equal protection of the law. Chief Justice Hughes in his opinion stated at page 81:

> "But it is said that from the standpoint of the state constitution the statute may operate unequally. It is unnecessary to comment on this point so far as the mere inconvenience which may be caused by possible conflicts is concerned. It is urged that the situation has been described as deplorable by the supreme court of the state * * * but it is not for this court to intervene to protect the citizens of the state from the consequences of its policy, if the state has not disregarded the requirements of the Federal Constitution."

Thus the people of Ohio through their Constitution and their Legislature have the right to establish policy, and not the courts of that state. Upon this point, Chief Justice Hughes in the foregoing opinion further stated at page 81:

> "The state has a wide discretion in respect to establishing its system of courts and distributing their jurisdiction."

The foregoing constitutional provision in Article IV, Section 2, expressly limits the power of the Supreme Court to deal with statutes. There is no power conferred upon the Supreme Court of Ohio to enlarge upon a statute. The only power conferred upon the Supreme Court of Ohio with respect to statutes is the aforesaid limited one to declare the same unconstitutional. The Supreme Court of Ohio, as we have pointed out, did not declare the pertinent statute in this proceeding unconstitutional, but proceeded to enlarge upon the same. In so doing, it judicially legislated and substituted by judicial fiat an indefinable discretion for the fixed statutory standard of moral turpitude.

So that the intent of the people to control state policy could not be mistaken, Article I, Section 20 of the Ohio Constitution was enacted, which provides:

> "This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people."

In short, it can be categorically stated that in the state of Ohio the citizens speaking through their Constitution have declared that the laws which shall be applied to its citizens shall be those passed by the Legislature, subject only to a specific prohibition in the Constitution. It cannot be doubted that every citizen within the state is entitled to the equal protection of that policy as expressed in its constitution and laws. Yet, the Supreme Court of Ohio has held that petitioner, merely because he is an attorney, may be summarily deprived of that protection under the name of inherent judicial power. No court in this state has the inherent right or power to alter, amend, or modify a statute, be it valid or otherwise. It can only declare it constitutional or unconstitutional, be it in the name of a lawyer or a panhandler.

C. The Complete Legislation on the Subject of Attorneys in Ohio.

This leads us to an examination of the laws in Ohio in regard to attorneys. There is no constitutional provision in Ohio concerning attorneys. At the time this proceeding was commenced against petitioner, there was a long-standing set of valid statutes covering the subject matter of attorneys and the practice of law completely; the admission to practice, discipline, removal, review, liability in certain cases, the practice of law and the punishment by

fine for unauthorized practice of law. Ohio Revised Code Sections 4705.01-4705.07, inclusive, and 4705.99 (App. C). The particular statute dealing with punishment of attorneys, Ohio Revised Code Section 4705.02. unequivocably provides that unprofessional conduct or misconduct involving moral turpitude or conviction of a crime involving moral turpitude are the sole grounds for the discipline of an attorney in the state of Ohio.

The legislative history of Ohio Revised Code Section 4705.02 shows a clearly legislative intent that moral turpitude be a prerequisite for any discipline.

In this state the Legislature has provided for the discipline of attorneys almost from the inception of Statehood. Thus in 1824 the Legislature provided the grounds for suspension—"misconduct in office" or "good cause shown." 29 v. Stat. 411 (1824). Then in 1885 the Legislature passed R. S. 563 providing for suspension or removal for any one of three grounds: "misconduct in office, conviction of crime involving moral turpitude, or unprofessional conduct involving moral turpitude." 82 v. Stat. 16, 26. Note that misconduct in office *without* moral turpitude was a sufficient basis for suspension or removal under that statute. These grounds were retained until 1925 when the Legislature spoke "loud and clear" that moral turpitude must be present before *any* discipline may be meted to a lawyer. In that year Ohio G. C. 1707 was amended to provide the identical language now found in Section 4705.02 R. C. 111 v. Stat. 411 (1925). That 1925 statute was (and the present statute is) complete in *all* phases: the courts where proceedings may be had; the punishment—public or private reprimand, or suspension or removal; the grounds—moral turpitude must be present, and misconduct alone is *not* sufficient; and finally, the scope of the suspension or removal—in all courts in the state. The Legislature then

has covered the field of disciplining an attorney completely. The punishment runs the gamut from the slightest (private reprimand) to the most severe (removal). In this respect where the Legislature meant to confer wide latitude upon the courts, it did so clearly and expressly. It was equally clear in its declaration that *no* discipline is authorized unless moral turpitude is found.

It is clear beyond argument, therefore, that a reading of the Constitution and decisions thereunder, and the laws of the state of Ohio would convince an attorney that he, as a citizen, was entitled to their protection—at least prior to the decision in this proceeding.

D. Prior Ohio Court Decisions on Attorneys and the Practice of Law.

This leads us, finally, to the Ohio Supreme Court decisions dealing directly with disbarment. In the early case of *In re Thatcher*, 80 Oh. St. 492, the Supreme Court of Ohio held that it had inherent power to disbar for a direct affront to the courts. This was a proceeding originating in the Supreme Court. Next came the decision in the case of *In re Hawke*, 107 Oh. St. 349. That case, like the instant proceeding, involved a disbarment action which originated in the lower court and which was instituted under the disbarment statutes. The attorney in appealing from judgment for disbarment rendered by the lower court, claimed that he had a right to have his case heard *de novo* on appeal since courts have inherent power in connection with attorneys, and that an attorney was an exception to other licensed persons. Here is what the Supreme Court said in answer to that contention at pages 349 and 350:

> "It is urged, however, that the *courts* have an inherent right to disbar or suspend attorneys at law from

the practice of their profession, and that, therefore, they are in a measure an exception to the general rule as to other licensed persons. We do not understand that when the *Legislature* confers a right upon a citizen of Ohio *any court* has an inherent right to arbitrarily, or for any cause *other than that enumerated in a statute*, deprive such person of such right, even though he be an attorney at law who is a *quasi* member of the court. Courts always have had and must have the power to hear and determine *contempts of court*, and to find persons, *even attorneys at law*, guilty of such contempt, and they may impose penalties that are at least the equivalent of temporary suspension from the practice; but they may not, as an inherent right, disbar an attorney at law, when that right has been conferred by a *statute. Attorneys at law are, and should be, governed by the same constitutional provisions touching the jurisdiction of courts as are other persons and professions. They are entitled to equal protection of the law, but no more."* (Emphasis supplied)

The *Hawke* decision, therefore, clearly distinguishes, on the one hand, contempt proceedings and inherent power to deal with affronts directly against the courts or with interference with the administration of justice from, on the other hand, statutory disbarment proceedings and the limited authority of the courts under those statutes. Moreover, the *Hawke* decision dealt with courts in general rather than with the Supreme Court alone.

Next in line was a recent decision of the Supreme Court of Ohio which gave further recognition and force to the disbarment statutes. *In re Joseph*, 152 Oh. St. 199. In that case the court denied a writ of mandamus and held that disbarment proceedings were not criminal prosecutions to be tried under the criminal code of this state. The significance of this decision is the recognition by the court of

the validity and effect of the disbarment statutes. The court stated at page 200:

> "Counsel for relator contend that a disbarment proceeding is penal in nature, having all the attributes of a criminal case, and is to be governed by the laws of criminal practice in a special statutory proceeding or quasi-criminal case and not in an ordinary civil case. They contend further that the latter portion of Section 1708, General Code, relating to disbarment and reading, 'he shall be allowed a reasonable time to collect and present testimony in defense, and he shall be heard by himself or counsel' and the requirements of Section 13442-1 General Code, that 'criminal cases shall be given precedence over civil matters' and 'shall be forthwith set for trial within a reasonable time, not exceeding thirty days thereafter' are mandatory.
>
> The above quoted provisions of Section 1708 General Core, *are mandatory*, but they do not deal with fixing the time for hearing a disbarment proceeding.
>
> * * * * * * * * * *
>
> The requirements of disbarment statutes are to be strictly construed in favor of one against whom charges are filed, but the fact that the court may reprimand, suspend or disbar an attorney does not convert a disbarment proceeding into a criminal prosecution to be tried pursuant to the Criminal Code of this state."

The next pronouncement in a disbarment case made by the Supreme Court of Ohio was on March 5, 1955. *In re Lieberman*, 163 Oh. St. 35. Here is what the court stated and held at page 35 in syllabus 1:

> "A proceeding to suspend or remove an attorney at law from office is strictly statutory and constitutes an action at law only, and the only appeal provided in such proceeding is one on questions of law."

In the *Lieberman* case a court of common pleas tried the attorney under the present disbarment statute and found him guilty of moral turpitude and disbarred him. The Court of Appeals reversed the decision on the evi-

dence and reinstated him as an attorney. It was on appeal from the decision of the Court of Appeals that the Supreme Court made its clear and wholly consistent statement sending the case back to the Court of Appeals with instructions to follow strictly the disbarment statute and the appellate procedure provided for reviewing actions at law. The court said at page 43:

> "The judgment of the Court of Appeals is reversed and the cause is remanded to the Court of Appeals to consider and pass upon the weight of the evidence in accordance with this opinion."

It can readily be seen, therefore, that up to the decision by the Ohio Supreme Court in this proceeding, attorneys almost from the inception of statehood were licensed and regulated through acts of the Legislature which the courts enforced in the exercise of their judicial power. This was as it should be; the Legislature made the laws and the courts interpreted them.

A few months before the instant decision the Supreme Court of Ohio in dealing with a specific category of lawyers, namely, judges, adhered strictly to the statute. *State ex rel Flynn v. Board of Elections of Cuyahoga County*, 164 Oh. St. 193. That case involved the qualifications for a municipal judge. Here again the Legislature has enacted a statute, Ohio Revised Code Section 1901.06, which provides in part that in order to qualify for a municipal judgeship, an attorney "shall have been admitted to the practice of law in the state and shall have been actively engaged in the practice of law as his principal occupation for the last five years." In holding that statute constitutional, as against the contention that it invaded the judicial power, the court stated at page 197:

> "This question is not one of first impression in this court. In the case of State ex rel Lippincott v. Metz-

ger et al., Board of Elections, 137 Oh. St. 307, 29 N. E. (2d) 361, claim was made that the General Assembly is without power to fix the qualifications of probate judges for office and to require as a prerequisite that such judges be admitted to the practice of law or have prior service as a judge.

This court held in the *per curiam* opinion that 'the qualifications for the office of probate judge not having been prescribed by the Constitution, the General Assembly has power to fix and determine the essential qualifications for the office.'

The Constitution is likewise silent as to the qualifications of municipal judges.

Accordingly, Section 1901.06, Revised Code, is not unconstitutional."

Similarly the Constitution is silent as to qualifications for attorneys.

The court in the same case, moreover, resorted to the *statute*, Ohio Revised Code Section 4705.01 (App. C), to determine whether the relator, a referee, had been engaged in the practice of law. Thus the court stated at page 201:

> "Since a judge of the Cleveland Municipal Court in the performance of his judicial duties can not, by this *statutory* definition, be considered as practicing law, then neither can relator's services, as a referee, in assisting a judge in the performance of judicial duties be considered the practice of law." (Emphasis supplied)

The foregoing decision, in short, held that judges, like other citizens of Ohio, are within the Constitution and laws of Ohio. The policy of the state, expressed in the Constitution, places the qualifications of judges and the practice of law in the law-making body, the Legislature.

It cannot be doubted that attorneys (like judges, other licensed persons and citizens) are subject to and entitled to the same policy. Until the date of the decision by the

Ohio Supreme Court in this proceeding attorneys were also within the Constitution and laws of this state. That decision, however, suddenly swept aside the Constitution and the laws and placed petitioner, an attorney, and his sole means of livelihood at the discretion of any judge in any court in the state of Ohio. The protection of the policy of this state was denied him. This unconstitutional deprivation was, moreover, accomplished by the equally unconstitutional means of judicial legislation—enlarging upon a valid statute retroactively to the time of the acts alleged.

Question No. 1.

The foregoing situation in the state of Ohio dramatically points up the following: the proceeding against petitioner was instituted and adjudicated under a statute, Ohio Revised Code Section 4705.02, which required a finding of moral turpitude before the court was authorized to mete out any punishment. The Supreme Court of Ohio reversed the finding of moral turpitude but nevertheless affirmed the suspension by holding on appeal: first, that the Legislature had no right to fix and limit the grounds upon which attorneys may be disciplined; secondly, that the statutory standard of moral turpitude was meaningless; thirdly, that the statutory standard was wiped out and added to the statute was the inherent discretion of any state court; and lastly, that even though the basic element under which the proceeding was commenced and adjudicated in the lower court was lacking, nevertheless, the Supreme Court of Ohio had the authority to confer upon the lower court the necessary additional authority and jurisdiction retroactively to affirm the suspension.

Such a judicial tour de force would be unthinkable in a case involving any other state citizen, be he judge, doctor,

merchant or thief. The Supreme Court justified its action upon the ground that the petitioner was an attorney, and that he was an officer in the sense that he was subject to the inherent discretion of the courts. This court does not share the Ohio Supreme Court's low opinion of the rights of lawyers. In the recent decision of *Cammer v. United States of America,* No. 110, October Term, 1955, —— U. S. ——, this court held on March 12, 1956, that attorneys have the same rights as other citizens. In that case this court held that an attorney was not an officer of the court within the meaning of the United States statute empowering United States courts to punish for contempt. Title 18, U. S. C. Section 401-2. Mr. Justice Black speaking for this court stated the following about the status of attorneys:

> "Certainly nothing that was said in Ex parte Garland or in any other case decided by this Court places attorneys in the same category as marshals, bailiffs, court clerk or judges. Unlike these officials a lawyer is engaged in a private profession, important though it be to our system of justice. In general he makes his own decisions, follows his own best judgment, collects his own fees and runs his own business. The word 'officer' as it has always been applied to lawyers conveys quite a different meaning from the word 'officer' as applied to people serving as officers within the conventional meaning of that term. Cf. Labor Board v. Coca Cola Bottling Co., 350 U. S. 264. We see no reason why the category of 'officers' subject to summary jurisdiction of a court under §401 (2) should be expanded beyond the group of persons who serve as conventional court officers and are regularly treated as such in the laws. See 28 U. S. C. §§601-963."

Similarly the designation of an attorney as an officer of the court by the Supreme Court of Ohio did not justify the Supreme Court's expansion of its own jurisdiction and

power and that of all other courts beyond the Constitution and the laws enacted thereunder.

In the *Cammer* case this court was dealing with a statute which curbed judicial power in a field bearing directly upon the courts themselves, namely, contempt. This court clearly focused the proper place of the judiciary in dealing with such a statute enacted by Congress. It recognized its judicial duty and *construed* the statute in order to determine the intent of Congress. This court also gave great weight to the statutory history and the circumstances of the enactment of the statute. After such judicial construction this court concluded that the lower court had wrongfully construed the statute and had expanded its scope beyond the intent of the Congress.

Contrast the foregoing judicial approach under the Constitution with the decision of the Ohio Supreme Court in this proceeding. The latter court not only failed to perform the judicial function of construing the statute but proceeded to destroy the basic part of the statute. Rather than to attempt to determine the intent of the Legislature (which, we have shown, is clearly expressed that moral turpitude is a prerequisite for punishment), the Supreme Court categorically denied the legislative intent and judicially legislated in defiance of that intent—all of this in a proceeding involving acts outside of courts and in no way affecting the administration of justice. In short, this court performed its judicial function under the Constitution of the United States while the Supreme Court of Ohio disregarded and violated its proper function under the Constitution of Ohio. The former is a clear example of due process; the latter is an equally clear example of the failure to apply due process of law.

This court in accordance with its decisions in the *Cammer* and other cases should make its own construction of the

decision of the Ohio Supreme Court in light of the Ohio Constitution and statutes, in order to determine whether the proceeding and the said decision are in conflict with the Constitution and laws of the United States. Thus in the case of *Yick Wo v. Hopkins, Sheriff*, 118 U. S. 356, this court stated at page 366:

> "That, however, does not preclude this court from putting upon the ordinances of the Supervisors of the County and City of San Francisco an independent construction; for the determination of the question whether the proceedings under these ordinances and the enforcement of them are in conflict with the Constitution and laws of the United States, necessarily involves the meaning of the ordinances, which, for that purpose, we are required to ascertain and adjudge."

Similarly in the case of *In re Summers*, 325 U. S. 561, this court made its own appraisal of the circumstances of the refusal of the Illinois Supreme Court to grant the petitioner the license to practice law in that state. Thus, Mr. Justice Reed speaking for the majority stated at page 566:

> "For the purpose of determining whether the action of the Supreme Court of Illinois in denying Summers' petition for an order for admission to practice law in Illinois is a judgment in a judicial proceeding which involves a case or controversy reviewable in this Court under Article III, Section 2, Cl. 1, of the Constitution of the United States, we must for ourselves appraise the circumstances of the refusal."

In the *Summers* decision, moreover, this court re-examined the reason for the refusal given by the Supreme Court of Illinois (inability to take the prescribed oath) and, even further, re-examined the Illinois interpretation of that oath by resorting to an analogy in the federal law. The majority of this court then based their judgment upon the validity of that same type of oath under the federal

Constitution. Thus, Mr. Justice Reed stated for the majority at page 573:

> "It is impossible for us to conclude that the insistence of Illinois that an officer who is charged with the administration of justice must take an oath to support the Constitution of Illinois and Illinois' interpretation of that oath to require a willingness to perform military service violates the principles of religious freedom which the Fourteenth Amendment secures against state action, *when a like interpretation of a similar oath as to the Federal Constitution bars an alien from national citizenship.*" (Emphasis supplied)

In short, the state action did not violate the Fourteenth Amendment of the United States Constitution, since similar federal action had been sanctioned under the federal Constitution. By way of contrast, the decision of the Ohio Supreme Court was undoubtely a denial of due process of law, as applied by this court in the case of *Cammer v. United States,* supra. In the latter case the attorney was accorded the protection of the statute and the Constitution under which it was enacted. In the instant proceeding petitioner has been denied the protection of the statute and the Constitution under which it was enacted.

Contrast, furthermore, the sound reasoning of the Supreme Court of North Carolina in the case of *In re Applicants for License,* 143 N. C. 1, 55 S. E. 635. In that decision, the court upheld the right of the Legislature to prescribe qualifications for admission and further held that if an applicant possessed those qualifications, he was entitled to be admitted. The court stated at page 637:

> "* * * we draw the conclusion that when a Legislature, by positive enactment, has prescribed the qualifications required to enable one to enter the legal profession, and a citizen presents himself for examination and is shown to possess these qualifications, the courts must admit him to the practice of the law.

We exercise our judicial functions in determining whether the applicant possesses the required qualifications, and here our power in the premises ends. To hold, as we are requested to do here, that, when a Legislature has acted and established the qualifications which shall be required, the court can go on and superadd others, would, in effect, destroy the right admitted to be in the Legislature and uphold the court in the exercise of legislative powers. If a Legislature, having prescribed certain qualifications, should undertake to direct whether an applicant did or did not possess them, this might be an unconstitutional exercise of judicial power. But not so here. The Legislature has established a general standard to which all applicants must conform, and has referred it to the other court to decide whether, in any particular case, the requirement has been met. The principal test, then, by which the two powers are distinguished is complied with. The Legislature, in the valid exercise of the police power, lays down a general rule. The judiciary applies the principle to the particular case."

* * * * * * * * * * *

"It is urged, however, that the statute impairs or destroys the inherent right of the court to direct and control the conduct of attorneys who are its officers. There are decisions which so express themselves on this question; and, if by inherent they intend to say, and this is all that most of them do say, that in the absence of legislation on the subject, the courts have the power to regulate and deal with the matters mentioned. This may be accepted. But, if by 'inherent' is meant that power, to the extent claimed here, is one inherent because essential to the existence of the court and the proper exercise of its functions, we do not think the position can be maintained."

When the Supreme Court retroactively enlarged upon the statute, it punished petitioner for acts which were not punishable under the statute existing at the time the acts were committed and at the time the proceeding was commenced. The fact that such retroactive punishment was

accomplished by judicial legislation condemns it even more severely as a violation of due process. This court in the case of *Ex parte Garland*, 71 U. S. 373, stated at pages 379 and 380:

> "The legislature may undoubtedly prescribe qualifications for the office, to which he must conform, as it may, where it has exclusive jurisdiction, prescribe qualifications for the pursuit of any of the ordinary avocations of life. The question, in this case, is not as to the power of Congress to prescribe qualifications, but whether that power has been exercised as a means for the infliction of punishment, against the prohibition of the Constitution. That this result cannot be effected indirectly by a State under the form of creating qualifications we have held in the case of Cummings v. The State of Missouri, and the reasoning by which that conclusion was reached applies equally to similar action on the part of Congress."

A fortiori such reasoning would apply to judicial legislation on the part of the Supreme Court of Ohio. Particularly is this true where a fixed norm for punishment was established by the Legislature, namely, moral turpitude, and the vague indeterminable discretion of any state court was substituted therefor.

Question No. 2.

Petitioner was brought into court to face a charge of moral turpitude; he was punished on appeal for something totally different. Until the decision of the Ohio Supreme Court, the fundamental defense in this proceeding was simply—no moral turpitude. To petitioner's dismay he learned for the first time on appeal that he could be punished for, among a host of other things, failing to "demean himself in a proper manner" or for such "practices as cannot fail to bring discredit upon himself, the profession

and the courts."—all to be decided at the inherent discretion and power of any state court in which he happens to be summoned.

Contrast the foregoing treatment with the lawful procedure accorded to the attorney involved in the proceeding of *In re Lieberman*, 163 Oh. St. 35, decided March 5, 1955. In that proceeding the attorney was tried under the disbarment statutes and disbarred by the lower court for moral turpitude. The Court of Appeals reversed and reinstated upon evidentiary grounds. The Supreme Court of Ohio, consistent with the disbarment statutes and the constitutional and statutory provisions concerning appeals, reversed the Court of Appeals and remanded the proceeding to that court with instructions to pass upon the weight of the evidence. Subsequently the Court of Appeals remanded to the lower court. The Supreme Court in that proceeding did follow the Constitution and the statutes enacted pursuant thereto in accordance with its holding that a proceeding against an attorney is strictly statutory and an action at law only.

Yet, the Supreme Court in the instant proceeding professed to see no discrimination or incongruity between the lawful protection accorded to the attorney in the *Lieberman* case and the treatment of petitioner in this proceeding. The Supreme Court stated that the procedure provided by statute could be followed and yet at the same time the statutory grounds could be enlarged by the exercise of inherent power. The Supreme Court failed to point out that without the statute in this proceeding, the lower court had no jurisdiction at all, and, moreover, without the statute, there could be no state-wide effect given to the judgment. Thus, within the space of less than one year, we have a startling example of discrimination. On the one hand, Attorney Lieberman was in all steps of his

proceeding accorded the protection of the statutes and the Constitution; on the other hand, petitioner in the instant proceeding was simply denied the protection of any law whatsoever.

Contrast also the treatment of a special class of lawyers, judges, by the Supreme Court, with that of petitioner in this proceeding. We have shown, supra, in the case of *State ex rel Flynn v. Board of Elections of Cuyahoga County*, 164 Oh. St. 193, that the qualifications for judges and the practice of law have been held by the Supreme Court of Ohio as subject to and controlled by legislative enactments.

Similarly when a judge is subject to removal, the Supreme Court of Ohio has been very careful to afford the judge involved the protection of the Ohio Constitution and the statutes passed pursuant thereto. Thus in the case of *McMillen v. Diehl, Judge*, 128 Oh. St. 212, the court said at page 214:

> "Statutes authorizing the removal of an incumbent from office are *quasi* penal in character and we agree with the Court of Appeals that removal statutes should be strictly construed and that the evidence sustaining the removal of an official from office should be clear and convincing."

The court was also careful to search the record for evidence of moral turpitude (at page 215):

> "However, in order to make a case of moral turpitude, evidence should be produced tending to show that, because of such borrowing, the incumbent discriminated in favor of the attorneys and others from whom he borrowed. If such causal connection be shown this would make a case 'of misconduct in office involving moral turpitude' as charged in the complaint."

The decision of the Ohio Supreme Court, moreover, is inherently productive of discrimination. The Supreme Court

has opened the door to all courts of the state to pass upon an attorney's qualifications for remaining in practice in the state of Ohio Each court has inherent power to decide whether an attorney should or should not practice law. The test of this decision, then, must include not only what has been done, but also what may be done thereunder. The variety of concepts, feelings and other human traits to which an attorney will be subject at the hands of the various courts can well be visualized. This situation has been aptly condemned by the Supreme Court of North Carolina in the previously cited decision of *In re Applicants for License*, 143 N. C. 1, 55 S. E. 635, at page 639:

> "° * ° The dissenting judge makes another pertinent suggestion, that, if this is one of the inherent and essential powers of the courts, it is just as inherent in one court as another, and so it might come about that the judges of the Supreme Court and each of the judges of the superior courts might require widely different set of qualifications, which would establish different rules in every section of the state. As my Lord Coke would say, 'the argument ab inconvenienti availeth much, reader.' As said in this able opinion of the Illinois court: 'the right to practice law is a privilege, and any law conferring this privilege should be general in its operation.' There should be no difference in sections and no unreasonable discrimination in classes or individuals, and the qualifications should be established and proclaimed, so that every citizen may know what is required of him; and this can only be successfully and properly accomplished by means of a public statute."

Those means were provided by the Ohio Legislature in this proceeding, but the Supreme Court destroyed the means for the sake of an end result.

On a broader scale the decision of the Ohio Supreme Court has segregated an attorney from other state citizens and subjected him to inherent court action outside of the

Constitution and law of Ohio. This court has consistently condemned discriminatory treatment by the state of segregated persons or classes, whether by a court (*Shelley et ux v. Kraemer et ux*, 334 U. S. 1), by a state board or agency (*Brown et al v. Board of Education of Topeka et al*, 347 U. S. 483) or by laws.

There has been much confusion injected into this proceeding, particularly in an attempt to becloud the foregoing point. It has been said that the right to practice law is not a property right and is simply a privilege, subject to the will of the state. Of course, the state has a right to regulate attorneys, along with other licensed persons. In fact, petitioner is insisting that the valid policy of the state regulating attorneys through its Constitution and legislative enactments be *enforced*. Petitioner is insisting that as a citizen of the state he is entitled to the application of that policy equally, no more, no less, with other citizens.

Accordingly, this petition cannot be brushed aside merely because the practice of law is involved. Regardless of whether the practice of law is a property right or not, the fact remains that it is petitioner's means of livelihood. To deprive him of that means is to deprive him of something of great value. Perhaps even greater is the loss of reputation and prestige which accompanies such deprivation. This court has fully recognized the value of that right and the gravity of such a loss and has further recognized such as within the scope of protection under the Fourteenth Amendment. *In re Summers*, 325 U. S. 561, supra. This sound conclusion is, of course, fortified by more recent decisions of this court; for example, in the case of *Brown, et al, v. Board of Education of Topeka, et al*, 347 U. S. 483, the right of a public school child to sit in the same school with children of another race was declared within the protection of the Fourteenth Amendment.

In summary, the decision of the Ohio Supreme Court must be condemned (1) as discriminating between petitioner and judges and other lawyers, (2) as inevitably producing discrimination among lawyers in the state, and (3) as segregating lawyers as a class, not on the basis of some fixed standard or policy, but rather completely outside of the Constitution and the law in utter denial of that standard and policy.

Question No. 3.

Prior to the proceeding herein petitioner was qualified to appear as an attorney in the federal District Court for the Northern District of Ohio. The proceeding herein has denied petitioner that qualification. The Congress has empowered the federal courts to enact their own rules concerning the conduct of causes by attorneys. Title 28 U. S. C. Section 1654 (App. C). Accordingly all federal courts, so far as we know, require a qualified status as an attorney in some state, territory or the District of Columbia before such persons may practice in the federal courts. It is neither convenient nor necessary to set forth herein the various court rules among the federal courts concerning this subject matter. For the purpose of this proceeding we call the court's attention to the pertinent part of Rule I B of the United States District Court for the Northern District of Ohio which provides:

> "An attorney admitted to practice in the Supreme Court of the United States, or who for not less than one year has been admitted to practice in the highest court of any State, Territory, the District of Columbia, or an Insular Possession, or in a District Court of the United States for any other District, may, upon motion of an attorney of this court in good standing, apply to be admitted to practice."

In short, the proceeding herein has deprived petitioner of his right to practice in a federal court which right was derived through a rule of the federal court promulgated by virtue of a statute of Congress.

It is significant that this court has recently been careful to protect the rights of attorneys in federal courts, even in view of the broad authority granted pursuant to the foregoing statute. *Sacher v. Association of the Bar of New York City*, 347 U. S. 388; *In re Levy*, 348 U. S. 978; *In re Isserman*, 348 U. S. 1.

CONCLUSION.

If the decision of the Ohio Supreme Court stands, it will be a monument to the burial of the attorney's constitutional rights in Ohio. The practice of law will have been segregated from every other profession and calling in the state and, ironically, placed outside of the law.

Disbarment or suspension is far more serious than the usual punishments for contempt. Yet the offense of contempt by an attorney may result in disbarment or suspension. This court has fully recognized the power of Congress to restrain the judicial power in contempt. Unless the power of the Legislature to restrain judicial power in disbarment is upheld, the incongruous result is that courts have unrestrained power over lawyers but restrained power in contempts against themselves.

In the state of Ohio there is no trial by jury in a disbarment proceeding. The same vital need for the precaution of law, therefore, exists in this proceeding as was held by this court to exist in summary contempt actions. The prosecuting committee in an Ohio disbarment proceeding is, moreover, an arm of the court. Hence the lawyer is facing the accuser who is also his judge. Unless a standard

of law under the Constitution is strictly upheld, the attorney will never have the necessary independence from the judge. The Chief Justice of this court has recently observed in his address on February 19, 1955, at Washington University:

> "The liberties thus written into our fundamental law have not gone unassailed in the course of our national history, for men in office are still men. Whether men derive their authority from hereditary right or from popular election, they remain prone to overstep constitutional limitations and invade legal immunities."

That observation underlines the need for government under law and not under men.

If the Congress of the United States passed the Act of 1831 for the protection of persons, including lawyers, from the power of federal courts, the necessity for such restraints against state courts is even more imperative. Whereas, the deprivation of a right to practice before a federal court may not preclude the lawyer from practicing in the courts of his state, under no circumstances, as we understand it, will a lawyer be permitted to practice in federal courts, unless he is at the time in good standing in the courts of his state. Thus the judicial fiat in this state upon which this suspension was eventually imposed extends far beyond the borders of this state.

By way of concrete example of how far this decision may extend, we are appending a petition which has been filed in the Supreme Court of Ohio by the Ohio Bar Association, a private, voluntary association (App. F). It calls upon that court to legislate fully upon the subject of attorneys, including procedural as well as substantive measures. The Supreme Court, in other words, is being requested to enact law in conflict with and in derogation

of the all-inclusive statutes enacted by the Legislature. Accordingly, the petition has been opposed by lawyers who respect the Constitution and the law, and the Cuyahoga County Bar Association (Cleveland) has filed a written brief in opposition.

This proposed petition is an almost unbelievable attempt by certain segments of the bar to place an entire profession outside of the Constitution and law. Such a petition forcefully emphasizes the importance of restoring those safeguards by reversal of the instant decision.

The foregoing also serves to emphasize the vast difference between the judicial act of declaring a statute unconstitutional and the non-judicial declaration changing and adding to a statute. The former enables the Legislature to replace the statute with a constitutional one; the latter denies the Legislature its right to make law and constitutes outright judicial fiat. This is particularly pertinent in Ohio, since the Ohio Supreme Court's power to declare a statute unconstitutional is limited. Unless this court intervenes, there is no recourse from such judicial legislation; for courts have the last word, even though it amounts to alteration of the statute.

Respectfully submitted,

JOHN J. CHESTER,
8 E. Broad St., Columbus 15, Ohio,
Attorney for Petitioner.

APPENDIX A.

Opinion of Supreme Court of Ohio.

In re McBride, 164 Ohio State: 419.

Acting under the provisions of Section 1707 et seq., General Code (Section 4705.01 et seq., Revised Code), the judges of the Court of Common Pleas of Mahoning county, upon information imparted to them by the Grievance Committee of the Mahoning County Bar Association that Wilbert B. McBride, an attorney at law of the city of Youngstown and duly admitted to the bar of Ohio, was probably guilty of misconduct as such attorney, appointed three attorneys at law of Mahoning county as a committee to prepare and file written charges against McBride.

Such charges embracing four specifications were duly prepared and filed, and a certified copy thereof was served on the respondent. The first specification charges respondent with having solicited employment in June 1950 and thereafter from a designated person (in a case involving a claim for damages for personal injuries); the second charges that respondent during the summer of 1952 endeavored to employ another person for remuneration to solicit professional employment for him; the third charges respondent with having attempted to impede and obstruct the investigations being made of his conduct as an attorney by the Grievance Committee of the Mahoning County Bar Association, and that he vilified the members of such committee by calling them vile and obscene names; the fourth charges that by reason of the misconduct set forth in specifications 1 to 3, inclusive, the respondent violated his oath of office as an attorney.

The matter came on for hearing before a judge of the Court of Common Pleas of another county, sitting by desig-

nation, upon the charges and specifications presented, the answer of respondent and upon a considerable amount of evidence introduced by both the committee and the respondent.

Whereupon the court found that all proceedings were had in accordance with law, and that respondent in his capacity and office as an attorney at law was guilty of misconduct involving moral turpitude as set out in the specifications contained in the charges; and the court suspended respondent from the practice of the profession of the law for and during the period of one year from February 26, 1954, in all courts of the state of Ohio.

An appeal on questions of law to the Court of Appeals resulted in an affirmance of the judgment below, and the allowance of a motion to require the Court of Appeals to certify its record places the matter before this court for a decision on its merits.

Mr. Paul E. Stevens, Mr. Raleigh P. Swanner and Mr. Henry C. Robinson, for appellee committee.

Mr. Clarence M. Addison, for appellant respondent.

Zimmerman, J. Section 1707, General Code (Section 4705.02, Revised Code), reads as follows:

"The Supreme Court, Court of Appeals or Court of Common Pleas may suspend or remove an attorney at law (from office) or may give private or public reprimand to him as the nature of the offense may warrant, for misconduct or unprofessional conduct in office involving *moral turpitude*, or for conviction of a crime involving moral turpitude. Such suspension or removal shall operate as a suspension or removal in all the courts of the state of Ohio. * * * Judges of such state courts are required to cause proceedings to be instituted against an attorney at law, when it comes to the knowledge of any judge or when brought to his knowledge by the bar association of the county in which

such attorney practices that he may be guilty of any of the causes for suspension, removal or reprimand." (Emphasis supplied.)

An important question in this case which should be squarely met and definitely decided is whether the statutory causes for the suspension, removal or reprimand of an attorney at law are exclusive and binding on the courts. There is language in the opinion in the case of In re Hawke, 107 Ohio St., 341, 349, 350, 140 N. E., 583, 585, which would indicate that the above question should be answered in the affirmative, but this court definitely held in the first two paragraphs of the syllabus in the case of In re Thatcher, 80 Ohio St., 492, 89 N. E., 39, that the Supreme Court of Ohio has inherent jurisdiction to disbar an attorney as an incident of its organization as a court as well as from its power to admit to the bar, and, furthermore, that Section 563, Revised Statutes (Section 1707, General Code; Section 4705.02, Revised Code), is but a regulative provision which does no more than recognize the existing power of the courts.

In other later cases this court has said that the power to admit attorneys to the practice of law and to suspend, disbar or otherwise discipline them rests inherently in the judicial branch of the government. State, ex rel. Turner, Atty. Genl., v. Albin, 118 Ohio St., 527, 161 N. E., 792; Land Title Abstract & Trust Co. v. Dworken, 129 Ohio St., 23, 193 N. E., 650; Judd v. City Trust & Savings Bank, 133 Ohio St., 81, 12 N. E. (2d), 288. And see State, ex rel. Thatcher, v. Brough, 15 C. C. (N. S.), 97, 23 C. D., 257, affirmed without written opinion in 90 Ohio St., 382, 108 N. E., 1133.

Upon admission to the bar lawyers become officers of the courts in which they are authorized to practice and are

responsible to the courts wherein they are such officers for professional misconduct.

The holding of this court In re Thatcher, supra, finds abundant support in numerous cases from other jurisdictions. The matter is well stated in the case of In re Richards, 333 Mo., 907, 915, 63 S. W. (2d), 672, 675, as follows:

"It is not always easy to determine what objects are naturally within the range or orbit of a particular department of government, but it will scarcely be denied that a primary object essentially within the orbit of the judicial department is that courts properly function in the administration of justice, for which purpose they were created, and in the light of judicial history they cannot long continue to do this without power to admit and disbar attorneys who from time immemorial have in a peculiar sense been regarded as their officers. Since the object sought is not naturally within the orbit of the legislative department the power to accomplish it is in its exercise judicial and not legislative, although in the harmonious co-ordination of powers necessary to effectuate the end and aim of government it may be regulated by statute to aid in the accomplishment of the object but not to frustrate or destroy it."

Later on in the opinion it is remarked, "The great weight of authority is that statutory grounds of disbarment are not exclusive." Among the cases cited in substantiation of this statement is In re Thatcher, supra.

In State Bar Commission, ex rel. Williams, v. Sullivan, 35 Okla., 745, 763, 131 P. 703, L. R. A. 1915 D, 1218, the observation is made:

"While the statutes of many of the states authorize the suspension or removal of attorneys upon specified grounds, it has generally been held that such statutes do not restrict

the general powers of the court over attorneys, who are its officers, and that they may be removed for other than statutory grounds."

Likewise, in In re Keenan, 313 Mass., 186, 196, 47 N. E. (2d), 12, 21, the Supreme Judicial Court of Massachusetts said:

"Statutes purporting to regulate admission to the bar * * * are to be interpreted as 'making provision in aid of the judicial department in reaching a proper selection of those qualified for admission as attorneys to practice in the courts.' * * * And statutes stating the grounds upon which an attorney may be disbarred also are to be so interpreted, and are not to be interpreted as limiting the grounds for disbarment."

Of similar import are the cases of Collins v. Godfrey, Admr., 324 Mass., 574, 87 N. E. (2d), 838; In re Mills, 1 Mich., 392; In re Hartford, 282 Mich., 124, 275 N. W., 791; Delano's Case, 58 N. H., 5, 42 Am. Rep., 555; Ruckenbrod v. Mullins, 102 Utah, 548, 133 P. (2d), 325, 144 A. L. R., 839; and In re Lambuth, 18 Wash., 478, 51 P., 1071, to which many more could be added.

The term "moral turpitude," as it relates to the professional conduct of an attorney has been interpreted differently by different courts. To the Supreme Court of Nevada (State, ex rel. Conklin, v. Buckingham, Clerk, 59 Nev., 36, 84 P. (2d), 49) it means "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen or to society in general," whereas to the Supreme Court of California (Stanford v. State Bar of California, 15 Cal. (2d), 721, 104 P. (2d). 635) it means "an act of an attorney which is contrary to honesty and good morals." For other definitions see In re Pearce, 103 Utah, 522, 527, 136 P. (2d), 969, 971.

Since, in our view, the statutory grounds for the suspension or disbarment of an attorney are not exclusive and are not strictly binding on the courts, other serious unprofessional and unethical conduct may be the basis for court proceedings to reprimand, suspend or disbar.

In the case of In re Information to Discipline Certain Attorneys, 351 Ill., 206, 225, 184 N. E., 332, 341, the court had the following to say:

"Attorneys are officers of the court and as such are charged with a duty to avoid conduct tending to bring the profession into disrepute. * * * In all cases where it appears that the attorney is an unsafe or unfit person to be trusted as an attorney, this court has the power and it is its duty, to strike his name from the roll. * * * Unprofessional conduct in a lawyer is that which violates the rules or ethical code of his profession or which is unbecoming a member of that profession. * * * The standard of professional integrity which has been applied and should be applied to those admitted to the practice of law is not satisfied by such conduct, merely, as enables them to escape the penalties of the criminal law."

Rule XXVII of the Rules of Practice of this court, entitled "Rules of Professional Conduct," provides in part:

"Section 1. These rules of professional conduct shall be binding upon all members admitted to practice law in the state of Ohio, and the wilful breach thereof shall be punished by reprmand, by suspension or by disbarment, as may be determined by any court of competent jurisdiction.

"The Canons of Ethics of the American Bar Association are commended; and nothing in these rules is intended to limit or supersede any provision of law relating to the duties and obligations of attorneys or the consequences of a violation threof.

"Section 2. An attorney at law shall not advertise or otherwise solicit professional employment. * * *

"Section 3. An attorney at law shall not employ another to solicit or to obtain or remunerate another for soliciting or obtaining professional employment for him."

Irrespective of these rules and irrespective of whether the brazen solicitation of business by an attorney, or his employment of others to secure business for him, constitutes "moral turpitude" (In re Veach, 1 Ill. (2d), 264, 115 N. E. (2d), 257), such conduct is universally condemned as a gross impropriety, unworthy of a member of the legal profession, and, when proved, makes him amenable to such discipline as the gravity of his offense demands. There are many cases so holding, among them being Utz v. State Bar of California, 21 Cal. (2d), 100, 130 P. (2d), 377; Librarian v. State Bar of California, 25 California (2d), 314, 153 P. (2d), 739; Louisville Bar Assn. v. Mazin, 282 Ky., 743, 139 S. W. (2d), 771; In re Durham, 190 Okla., 588, 126 P. (2d), 69; State, ex rel. Sorensen, Atty. Genl., v. Goldman, 127 Neb., 340, 255 N. W., 32; In re Greathouse, 189 Minn., 51, 248 N. W., 735; State v. Kiefer, 197 Wis., 524, 222 N. W., 795.

It would be a sorry state of affairs indeed if courts were powerless to discipline their officers for unprofessional and unethical conduct unless such conduct was so reprehensible as to involve moral turpitude. To the writer, at least, "turpitude" implies something extremely bad, turpitude being derived from the Latin word, "turpis," meaning vile.

A well known fact is that lawyers and members of the judiciary are reluctant to take action to discipline their brothers in the legal profession unless those brothers persistently misbehave. The legal profession is a high and dignified calling, and those who enter it should recognize

that fact and govern themselves accordingly. Upon being admitted to the practice of law they take a solemn oath which binds them to superior standards of conduct. Integrity, honesty and dignity are three attributes which clients, courts and the public have a right to expect and demand from those who follow the profession of law.

In the case of In re Tracy, 197 Minn., 35, 43, 266 N. W., 88, 91, the court made these pertinent remarks:

"The point is in the fundamental difference between any commercial business and a profession. The vocation of a lawyer is a profession. In consequence, his conduct as attorney, counselor, and advocate is to be measured not by the indefinite, still developing, and largely unwritten standards of trade and countinghouse, but by those of his profession, which, while they have not reached their ultimate state, have yet attained the development and degree of formation evidenced by the Canons of Ethics. That being so, lawyers will do well to remember, for their own solace if for no other reason, that they are engaged in a profession rather than a business and that it is by professional rather than commercial standards that their conduct will be judged when properly called in question. That basic and irremovable distinction both exposes and explains the error of those who choose to enter the legal profession supposing it to open an easy road to affluence."

In our opinion, the charges and specifications brought against the respondent herein are good and sufficient to bring him before the bar of justice and, if proved, fully justified the Court of Common Pleas in subjecting him to disciplinary action. Although this court is not required to and does not ordinarily weigh evidence, we have examined the bill of exceptions and are satisfied there was ample credible evidence to support those charges and

specifications. The evidence shows that the respondent had pursued a course of conduct which was highly unprofessional and unethical.

"In admitting a lawyer and granting him a license to practice law, it is on the implied understanding that the person receiving such license shall in all things demean himself in a proper manner and abstain from such practices as cannot fail to bring discredit upon himself, the profession and the courts." State, ex rel. Nebraska State Bar Assn., v. Palmer, 160 Neb., 786, 71 N. W. (2d), 491.

True, in the case of In re Lieberman, 163 Ohio St., 35, 38, 125 N. E. (2d), 328, 330, it is said that "a proceeding to suspend or remove an attorney at law from office is strictly statutory," but we see nothing inconsistent or incongruous in following the mechanics and mode of procedure provided by statute for the initiation and conduct of proceedings for the reprimand, suspension or removal of attorneys and at the same time enlarging the statutory grounds for such action by the exercise of the inherent powers posessed by courts in these matters. The inherent power of courts to discipline attorneys is not affected by recognizing and pursuing the regulations and practice prescribed by the Legislature on the subject. State v. Cannon, 196 Wis., 534, 221 N. W., 603.

We find no merit in respondent's contention that the charges and specifications are fatally defective because they were not verified. There are no requirements, statutory or otherwise in that respect, and respondent was not prejudiced thereby.

In conclusion, a lawyer who is forthright in his professional conduct and in his relations with his clients, the courts and the public has nothing to fear, but one, who pursues a devious course in his professional life, forgets

his oath of office and brings the legal profession into disrepute by his actions, deserves to be subjected to disciplinary measures.

The judgment of Court of Appeals is affirmed.

Judgment affirmed.

Weygandt, C. J., Matthias, Hart, Stewart, Bell and Taft, J. J. concur.

APPENDIX B.

Opinion and Decision of the Court of Common Pleas.

Belt, J.:

At the outset I desire to say a word of commendation concerning the lawyers who appeared in this controversy. It is a difficult task for any member of the bar to appear before a court and prefer charges against a fellow member of the bar and it is equally difficult for a lawyer to appear and represent another lawyer charged with misconduct in office. All of the lawyers involved in the submission of this case have conducted themselves in a manner reflecting the highest traditions of the bar and, much as they may have felt that the task was distasteful, they have nobly acquitted themselves and deserve the highest commendation from their fellow members of the bar. I feel that it is the court's duty to say what I have said concerning the committee, who prosecuted this action, and counsel for the respondent, who appeared in his defense.

This cause came into this court in the usual manner as provided by law and practice. Upon complaint being made to the members of the Court of Common Pleas of this county, a committee of the Bar of the county was appointed by the judges of the court to proceed in such manner as the committee might determine to be proper.

In due time, certain specifications were prepared and filed in this court by the committee, charging said respondent, Wilbert B. McBride, with unprofessional conduct as follows: That he has been guilty of misconduct and/or unprofessional conduct in office involving moral turpitude as such attorney at law in the following particulars:

Specification No. 1. That he solicited professional employment from one, E. J. Sells, in or about the month of June, 1950 and thereafter.

Specification No. 2. That he, during the summer of 1952, attempted and made an offer to one, Carl J. Scharrer, to employ him to solicit professional employment for remuneration, offering to pay to the said Carl J. Scharrer a portion of the fees to be derived therefrom.

Specification No. 3. That in February of 1953, while an investigation of his activities relating to the said Carl Scharrer was being made by the grievance committee of the Bar Association of this county, he attempted to impede and obstruct said investigation and vilified the said committee by calling them obscene and profane names.

That by reason of the professional misconduct hereinbefore described in Specifications 1 to 3, both inclusive, the said Wilbert B. McBride has violated his oath of office as an attorney at law. The prayer is that he be removed from office as such attorney or that the court make such other order as the court may deem proper and equitable. The charges are signed by the committee, comprising Paul E. Stevens, Raleigh P. Swanner and Henry C. Robinson.

Following the filing of the charges, this member of the Court of Common Pleas of Belmont county was assigned by the Chief Justice of the Supreme Court of Ohio to hear and determine said cause, which hearing was had on the thirtieth day of November, 1953.

The standards of conduct as set out in the Code of Professional Ethics, as adopted by the American Bar Association and in force in Ohio, is well known to every student of the law and to every lawyer that has obtained a franchise to practice his profession. Those standards of ethics have proven their worth and if not observed by lawyers generally the profession of law would degenerate into a mere business. A well-known quotation "Eternal vigilance is the price of liberty" might well be applied to the profession of the law. In the profession, eternal vigilance upon the part of every member of the bar is necessary to preserve the professional purity of the profession itself and without the exercise of due vigilance the code of ethics of the profession would become "as sounding brass and a tinkling cymbal". The observance of these standards is of vital concern to every member of the bar, not only in this county but everywhere, for the reason that to the extent they are violated members of the bar lose the respect of the public which should be jealously guarded at all times by every member of the profession. For these reasons methods have been provided by law for the punishment of offenders.

Section 1707 of the General Code of Ohio, now Section 4705.02 of the Revised Code, provides in substance, that the Supreme Court, the Court of Appeals or the Court of Common Pleas may suspend or remove an attorney at law from office or may give private or public reprimand to him as the nature of the offense may warrant for misconduct or unprofessional conduct in office involving moral turpitude and that such suspension or removal shall operate as a suspension or removal in all of the courts of the state. The section further provides that judges of the state courts are required to cause proceedings to be instituted against an attorney when it comes to the knowledge of any judge

or when brought to his knowledge by the Bar Association of the county in which such attorney practices, that he may be guilty of any of the causes for suspension, removal or reprimand. By reason of the statute just mentioned, it is within the power of bar associations and courts to purge such associations of undesirable members or to cause such members to be reprimanded.

Safeguarding the procedure in such cases, Section 4705.03 of the Revised Code provides that before an attorney at law is suspended or removed or publicly or privately reprimanded, written charges must be filed against him, stating distinctly the grounds of complaint and a copy thereof certified by the clerk under the seal of the court served upon him.

All the conditions provided by statute have been complied with in this case.

The canons of professional ethics of the American Bar Association, which have been adopted in Ohio, provide in part as follows:

> "It is unprofessional to solicit professional employment * * * through touters or by personal communication or interviews not warranted by personal relations."
>
> "It is disreputable to breed litigation by seeking out those with claims for personal injuries * * * or to employ agents or runners for like purposes. * * * a duty to the public and to the profession devolves upon every member of the Bar having knowledge of such practice upon the part of any practitioner immediately to inform thereof to the end that the offender may be disbarred."

Before a court can properly find a defendant guilty in a case of this character, the evidence sustaining such charges must be clear and convincing.

As is well set out in the brief of counsel for the respondent in this action, the general public must be protected against members of the Bar whose conduct is such as to involve moral turpitude in their dealings with their clients and the attorney against whom such charges are made must be protected from a finding by the court of guilty unless said court is sure that respect to the charges filed said attorney has been guilty of misconduct in his office involving moral turpitude. Continuing, counsel for the respondent says in his brief:

> "By reason of the heritage of dignity and respect which we, as lawyers, have from our predecessors, we have chosen in our dealings with one another to refrain from advertising our wares as common huxters and in so doing we have been forced, and rightly so, to depend upon our reputation, character, dignity, admiration, respect and standing in the community in order to attract clients, which of course most all of us must have in order to exist and practice our profession."

The court heartily endorses these statements as being professionally and legally correct.

We come now to a consideration of the various specifications.

Referring to Specification No. 1, Mr. McBride, the respondent, was not acquainted with E. J. Sells, who had been injured and was in a hospital, but did visit him in company with a friend, at which time a discussion was had of a possible claim by Mr. Sells against the party who allegedly negligently caused his injuries. At that time, the respondent said to Mr. Sells "You have a good claim." Shortly following Mr. Sells' release from the hospital, the respondent called upon him at his home and the two discussed Mr. Sells' contemplated case. Both of these calls were unsolicited by Mr Sells. According to the statement

of Mr. Sells, he had had some personal acquaintance with Mr. Vukovich, who accompanied Mr. McBride to the hospital, in that he had bowled with him a few times. Mr. Vukovich was again with the respondent when they called upon Mr. Sells at the home. His further testimony is that Mr. Vukovich stayed a few minutes and then Mr. McBride told him to go and get some cigars. The record is silent as to whether Mr. Vukovich returned. After some desultory conversation, the respondent told Mr. Sells about a personal injury case he had handled. The next day following, Mr. McBride again called at Mr. Sells' home, at which time a contract was signed whereby Mr. Sells retained Mr. McBride as his lawyer. The respondent denies solicitation in this case.

Specification No. 2 charges that the respondent offered one, Carl J. Scharrer, who was a railroad engineer, to employ him to solicit professional employment for the respondent for a remuneration. We have the testimony of both Mr. Scharrer and the respondent. The respondent handled a claim for Mr. Scharrer on which he collected $150.00 but failed to account to Mr. Scharrer from the proceeds of such collection until a long period of time had elapsed and then only after these charges were filed. Mr. Scharrer also testified as to the vilification of the members of the committee by the respondent and the record of the evidence goes into detail in that respect. The respondent denies the charges as made by Mr. Scharrer and attempts to explain the reasons for not making a prompt settlement of the fund collected.

Judge Joel Sharp of the Court of Common Pleas of Columbiana county testified that the respondent and an associate were charged in Columbiana county with the solicitation of business and that proceeding was dismissed upon respondent's promise not to further solicit business in that

county. That disposition was about as effective as placing an habitual criminal on probation provided he remains away from the county. The respondent became quite confused in trying to explain his attitude upon that occasion but the facts are that he did agree to discontinue further solicitation of business in Columbiana county.

The testimony of the respondent is replete with attempted evasions and explanations which do not ring true and in the opinion of the court are not true. There can be little question in the mind of anyone who reads the record in this case but that the respondent in his desperation to head off the pending charges in this case, did vilify the members of the prosecuting committee, which vilification, in the opinion of the court, tends to prove the truth of the charges contained in Specifications 1 and 2. Upon a consideration of the whole record, there can be little question in the mind of the court, or of any person who may read the record, but that the evidence is clear and convincing that the respondent, Wilbert B. McBride, is guilty as charged with misconduct in office involving moral turpitude as an attorney at law. That he seemed to be in need of funds is demonstrated by his conduct in connection with the Sells matter as well as that of the Scharrer matter.

The court is of the opinion and finds by clear and convincing evidence that Wilbert B. McBride has been guilty of misconduct involving moral turpitude as claimed in the specifications contained in the charges in this case. This court would have been happy had it been able to find otherwise.

We come now to the question of punishment.

The well recognized ethics of the profession and the oath which every lawyer is required to take are insurmountable barriers beyond which an attorney at law must not go if

loyal to his oath and the ethics of his profession. A lawyer is an officer of the court and as such officer is in duty bound to uphold the standards of professional ethics.

Having found the respondent guilty, the further duty of the court is to prescribe the penalty. The respondent has been duly admitted to the practice of the law and for that reason is presumed to be qualified by education to exercise that privilege, which is an exclusive franchise. The respondent is comparatively a young man and should have before him many years of service which can be useful. Accordingly, it is the judgment of the court that he should be and hereby is suspended from the practice of the profession of the law for and during the period of one year from this date in all of the courts of this state, during which period he shall in no wise engage in the practice of law in any manner or form, directly or indirectly, or to hold himself out as a lawyer or to have an office for that purpose.

The clerk of this court is hereby directed to send a certified copy of the final journal entry in this case to the Supreme Court, the Court of Appeals of this district and to the Federal Court of this Federal Judicial District.

The court hereby instructs the committee heretofore appointed to prepare a journal entry in accordance with this opinion and decision and to submit the same to counsel for the respondent for approval and to the court for final action. A fee of $100.00 to each member of the committee is hereby authorized and ordered to be paid as provided by law. The respondent to pay the costs of this proceeding exclusive of the attorney fees. The entry will be prepared at once and submitted to counsel and the court.

Clifford L. Belt, Judge.

APPENDIX C.

Constitutional and Statutory Provisions

United States Constitution, Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 28, U. S. C., Section 1654

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel, as, by rules of such courts, respectively, are permitted to manage and conduct causes therein. June 25, 1948, c. 646, 62 Stat. 944, amended May 24, 1949, c. 139 §91, 63 Stat. 103.

Ohio Constitution, Article I, Section 20

This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people.

Ohio Constitution, Article II, Section 1

The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating

money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls.

Ohio Constitution, Article IV, Section 2

The supreme court shall, until otherwise provided by law, consist of a chief justice and six judges, and the judges now in office in that court shall continue therein until the end of the terms for which they were respectively elected, unless they are removed, die or resign. If any of said judges shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the chief justice, or in case of the absence or disability of the chief justice, the judge having the longest period of service upon that court, may direct any judge of any court of appeals to sit with the judges of the supreme court in the place and stead of the absent judge. The judge of the court of appeals so designated shall temporarily perform the duties of a judge of the supreme court as to such cause or causes designated. A majority of the supreme court shall be necessary to constitute a quorum or to pronounce a decision, except as hereinafter provided. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in all cases involving questions arising under the constitution of the United States or of this state, in cases of felony on leave first obtained, and in cases which originated in the courts of appeals, and such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law. It shall hold at least one term in each year at the seat of government, and such other terms, there or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors

of the state at arge for such term, not less than six years, as may be prescribed by law, and they shall be elected, and their official term shall begin, at such time as may now or hereafter be fixed by law. Whenever the judges of the supreme court shall be equally divided in opinion as to the merits of any case before them and are unable for that reason to agree upon a judgment, that fact shall be entered upon the record and such entry shall be held to constitute an afirmance of the judgment of the court below. No law shall be held unconstitutional and void by the supreme court without the concurrence of at least all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void. In cases of public or great general interest the supreme court may, within such limitations of time as may be prescribed by law, direct any court of appeals to certify its record to the supreme court, and may review, and affirm, modify or reverse the judgment of the court of appeals. All cases pending in the supreme court at the time of the adoption of this amendment by the people, shall proceed to judgment in the manner provided by existing law. No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

Ohio Constitution, Article IV, Section 4

The jurisdition of the court of common pleas, and of the judges thereof shall be fixed by law.

Ohio Constitution, Article IV, Section 18

The several judges of the supreme court, of the common pleas, and of such other courts as may be created, shall, respectively, have and exercise such power and jurisdiction, at chambers, or otherwise, as may be directed by law.

Ohio Revised Code, Section 4705.01

No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which he is not a party concerned, either by using or subscribing his own name, or the name of another person, unless he has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules. Admission to the bar shall entitle such person to practice before any court or administrative tribunal without further qualification or license.

No sheriff, deputy sheriff, or coroner shall practice as an attorney at law in any court of this state, and no clerk of the supreme court or court of common pleas, or the deputy of either, shall practice in the particular court of which he is clerk or deputy.

No judge of any court of record in this state shall engage in the practice of law during his term of office, either by appearing in court, by acting as advisory or consulting counsel for attorneys or others, by accepting employment or acting as an atttorney, solicitor, collector, or legal advisor for any bank, corporation, or loan or trust company, or by otherwise engaging in the practice of law in this state, in or out of the courts, except as provided in section 1901.11 of the Revised Code.

A judge may complete any business undertaken by him in the United States District Court, the United States circuit court of appeals, or the supreme court of the United States prior to his election as judge."

Ohio Revised Code, Section 4705.02

The supreme court, court of appeals, or court of common pleas may suspend or remove an attorney at law from office or may give private or public reprimand to him as the nature of the offense may warrant, for misconduct or un-

professional conduct in office involving moral turpitude, or for conviction of a crime involving moral turpitude. Such suspension or removal shall operate as a suspension or removal in all the courts of the state. The clerk of court upon such suspension or removal shall send a copy thereof to the supreme court, the court of appeals, and to the federal court of the district in which said attorney resided at the time of trial for such action as is warranted. Judges of such state courts are required to cause proceedings to be instituted against an attorney, when it comes to the knowledge of any judge or when brought to his knowledge by the bar association of the county in which such attorney practices that he may be guilty of any of the causes for suspension, removal or reprimand.

Ohio Revised Code, Section 4705.03

Before an attorney at law is suspended or removed, or publicly or privately reprimanded, written charges must be filed against him, stating distinctly the grounds of complaint, and a copy thereof, certified by the clerk, under the seal of the court, served upon him. After such service, such attorney shall be allowed a reasonable time to collect and present testimony in his own defense, and he shall be heard by himself or counsel.

Ohio Revised Code, Section 4705.04

In case of suspension or removal of an attorney at law by the court of common pleas, an appeal on questions of law may be had to the court of appeals, and the sentence of either the court of common pleas or the court of appeals, may be reviewed on appeal on questions of law in the supreme court. If such suspended or removed attorney shall desire a modification of the decree of suspension or removal, he shall file a written motion therefor in the court which entered such decree.

Ohio Revised Code, Section 4705.05

The court in which charges or written motion is filed in accordance with sections 4705.03 and 4705.04 of the Revised Code, shall allow to the persons appointed to file and prosecute the charges, or to resist the modification of any decrees, for their services in either case, a reasonable sum, not exceeding one hundred dollars, to each person, together with the costs and expenses incurred by him in such proceedings. The amounts allowed shall be paid from the county treasury of the county wherein such proceedings are had, upon the warrant of the county auditor. If such charges or motion is filed in the supreme court, such allowances shall be paid from the state treasury.

Ohio Revised Code, Section 4705.06

If a suit is dismissed for the nonattendance of an attorney at law practicing in any court of record, it shall be at his costs, if he has not a just and reasonable excuse. He shall be liable for all damages his client sustains by such dismissal, or any other neglect of his duty, to be recovered in any court of record. Such attorney receiving money for his client, and refusing or neglecting to pay it when demanded, shall be proceeded against in a summary way, on motion, before any court of record, either in the county in which the judgment on which such money has been collected was rendered, or in the county in which such attorney resides, in the same manner and be liable to the same penalties as sheriffs and coroners are for money received on execution.

Ohio Revised Code, Section 4705.07

No person who is not regularly licensed to practice law in this state shall hold himself out in any manner as an attorney at law, or shall represent himself either orally or in writing, directly or indirectly, as authorized to practice law.

The use of "lawyer," "attorney at law," "counselor at law," "law," "law office," or other equivalent words by any person not licensed to practice law, in connection with his own name, or any sign, advertisement, card, letterhead, circular, or other writing, document, or design, the evident purpose of which is to induce others to believe such person to be an attorney, constitutes holding out within the meaning of this section.

Ohio Revised Code, Section 4705.99

Whoever violates section 4705.07 of the Revised Code shall be fined not less than twenty-five nor more than five hundred dollars.

APPENDIX D.

Entry of the Common Pleas Court of Mahoning County

This cause came on to be heard before the Honorable Clifford L. Belt, judge of the Court of Common Pleas of Belmont county, Ohio sitting by designation by order of the Chief Justice of the Supreme Court of Ohio upon the charges and specifications heretofore filed herein by the committee appointed by the Court of Common Pleas of Mahoning county, Ohio, the answer of the respondent, and the evidence adduced in open court; that present at and during said hearing were Attorneys Paul E. Stevens, Raleigh P. Swanner and Henry C. Robinson, being all of the members of the committee appointed by the Court of Common Pleas of Mahoning county, Ohio, to make, file and prosecute said charges and the respondent, Wilbert B. McBride and his counsel, Edwin L. Stanley.

The court, after having examined the charges and specifications, and the answer of the respondent, heard the evidence presented by said committee and by the respondent,

and being fully advised in the premises finds: that all proceedings were had in conformity to and with Sections 1707 and 1708 and related sections of the General Code of the laws of the state of Ohio, made and provided for in such cases, and that the court has jurisdiction to hear and determine this cause; that the facts as set out in the charges and specifications are true; that respondent, Wilbert B. McBride, in his capacity and office as an attorney at law has been guilty of misconduct involving moral turpitude as set out in the specifications contained in the charges in this case, which acts constitute unprofessional conduct in his capacity and office as an attorney at law.

It is, therefore, ordered, adjudged and decreed that respondent, Wilbert B. McBride, should be and hereby is suspended from the practice of the profession of the law for and during the period of one year from February 26, 1954, in all courts of the state of Ohio, during which period he shall in no wise engage in the practice of law, directly or indirectly, or to hold himself out as a lawyer or to have offices for that purpose.

It is further ordered, adjudged and decreed that respondent, Wilbert B. McBride, pay the costs of this proceedings, exclusive of the attorney fees herein set for the committee, herein taxed and to be taxed for all of which judgment is hereby rendered.

It is further ordered, adjudged and decreed that the members of said committee, to-wit: Attorneys Paul E. Stevens, Raleigh P. Swanner and Henry C. Robinson, shall be allowed compensation as provided for by General Code Section 1710 of the laws of the state of Ohio in the sum of $100.00 each and the auditor of Mahoning county, Ohio is hereby directed to draw drafts in such amounts payable to said attorneys which shall be paid by the treasurer of Mahoning county, Ohio, as provided by law.

It is further ordered and directed that the clerk of this court send a certified copy of this journal entry to the Supreme Court of Ohio, the Court of Appeals of this district and to the United States District Court of this federal judicial district.

Exceptions granted to respondent.

APPENDIX E.

Proceedings in Ohio Supreme Court.

ASSIGNMENT OF ERRORS.

Respondent-appellant for his assignment of errors in this proceeding states that the judgment entered by the Court of Appeals for Mahoning county on April 13, 1955, is erroneous and prejudicial to respondent-appellant in the following respects:

6. The judgment and order of the Court of Common Pleas, affirmed by the Court of Appeals, contravened the Constitutions of the state of Ohio and the United States.

7. The order and judgment of the Court of Common Pleas, affirmed by the Court of Appeals, deprived respondent-appellant of his property, reputation, rights and privileges without due process of law and denied him equal protection of law, all in violation of the Constitutions of the state of Ohio and of the United States.

JOURNAL ENTRY.

(Dated June 29, 1955.)

This cause came on to be heard upon the transcript of the record of the Court of Appeals of Mahoning county, Ohio, upon the motion of the appellee to dismiss the appeal filed as of right herein, and was argued by counsel.

On consideration whereof, it is ordered and adjudged that said appeal be, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause.

JOURNAL ENTRY.

(Dated January 11, 1956.)

This cause came on to be heard upon the transcript of the record of the Court of Appeals of Mahoning county, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same is hereby, affirmed; and it appearing to the court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellant its costs herein expended taxed at $.....

Ordered, that a special mandate be sent to the Court of Common Pleas of Mahoning county, to carry this judgment into execution.

Ordered, that a copy of this entry be certified to the clerk of the Court of Appeals of Mahoning county, "for entry".

APPLICATION FOR REHEARING.

(Filed January 24, 1956.)

Respondent, Wilbert B. McBride, makes application for rehearing in the above proceeding upon the following grounds and for the following reasons:

(1) The decision of the court has denied respondent due process of law under the federal Constitution (United States Constitution, 14th Amendment) in that:

a. The affirmance of the judgment of suspension of respondent rendered by the Common Pleas Court was in the same proceeding based, on the one hand, upon the validity

of the statute granting jurisdiction to that court and giving statewide effect to the judgment and, yet on the other hand, upon the inherent powers of all state courts (including the same Common Pleas Court) to enlarge upon the grounds enumerated in that same statute; this constituted an intermingling of the judicial and legislative functions in violation of the separation of powers between those branches of the government.

b. The holding that courts of this state (including the Common Pleas Court) have inherent power to enlarge upon grounds enumerated in a statute which covers all types of discipline to be meted out to an attorney in this state constituted judicial legislation in violation of the constitutional doctrine of the separation of powers of government.

c. The proceeding against respondent was instituted and tried in the Common Pleas Court under the statute, and defendant was served with a complaint which charged respondent with conduct involving moral turpitude as required by the statute; yet this court, although recently holding that such a proceeding is strictly statutory and an action at law only, has now deprived respondent of his privilege to practice law for conduct less reprehensible than that involving moral turpitude by virtue of its holding that the courts in this state have inherent power to enlarge upon the statutory grounds.

d. The judgment of affirmance of the judgment of the Court of Common Pleas was erroneous and contrary to constitutional and statutory appellate proceedings in that the judgment of affirmance by this court did not affirm, modify or reverse the judgment of the lower court, but constituted a new judgment which this court decided the Court of Common Pleas should have entered by reason of the Common Pleas Court's inherent power to enlarge upon the statutory grounds.

e. Respondent has been denied an effective appeal by virtue of this court's holding that courts (including the Common Pleas Court) have inherent power to enlarge upon the statutory grounds, for there is no basis or provision for an appeal on the merits from a judgment based upon the exercise of inherent power.

f. The holding of this court destroyed the ascertainable standard provided by law in proceedings against attorneys and applied instead against respondent the completely indefinable concept of what the Common Pleas Court, this court (or any other state court) may deem unacceptable in an attorney.

(2) The decision in this case has denied respondent equal protection under the law in violation of the federal Constitution (United States Constitution, 14th Amendment) in that:

a. This court has affirmed a judgment of suspension based upon a standard or concept of conduct applied by the Common Pleas Court, even though the statutory requirement of moral turpitude was lacking; this court's decision, moreover, will result in different concepts or standards applied by various state courts, from which there will be no appeal, as stated above; other attorneys in this state will suffer from the lack of uniformity and discrimination.

JOURNAL ENTRY.

(Dated February 1, 1956.)

Upon consideration of the above applications for rehearing, it is ordered by the court that rehearings be, and the same hereby are, denied.

APPENDIX F.

Petition For Revision of Disciplinary Procedure

Now comes the Ohio State Bar Association by its Special Committee on Disciplinary Procedures, duly authorized in the premises by action of the Council of Delegates and the Executive Committee of said Association, and respectfully petitions this Court for an order repealing its present Rule of Practice No. XXVII and adopting in lieu thereof a new Rule XXVII substantially in manner and form shown in the "Proposed Amended Rule No. XXVII" attached hereto, marked for identification "Exhibit A" and by this reference thereto made a part of this petition.

Dated at Columbus, Ohio, this 29th day of April, 1955.

Ohio State Bar Association
By the Special Committee on
Disciplinary Procedures
(signatures)

Proposed Amended Rule No. XXVII

Pursuant to the powers of this Court over the Bar of this State and the members thereof, the following rules are hereby adopted to take effect on January 1, 1956, and to remain in force until altered or abrogated.

It is ordered:

Board of Commissioners on Grievances and Discipline

(1) There is hereby created, as commissioners of this Court, a Board of Commissioners on Grievances and Discipline. Said Board of Commissioners is empowered and charged to receive, entertain, inquire into, take proofs, make findings, and submit recommendations to this court as hereinafter provided:

(a) Concerning complaints of misconduct as hereinafter defined which are alleged to have been committed by any attorney and counselor-at-law or judge, or

(b) concerning practices of any attorney and counselor-at-law or judge which tend to defeat the administration of justice or to bring the courts or the legal profession into disrepute, or

(c) relating to petitions for reinstatement as an attorney and counselor-at-law in this state.

Said Board of Commissioners on its own motion may cause to be instituted as to any such matters whatever investigation or action it deems proper by referring the matters to the Grievance Committee of the appropriate local bar association or to the Committee on Legal Ethics & Professional Conduct of the Ohio State Bar Association.

Said Board of Commissioners shall consist of fifteen (15) members of the Bar of this Court, who need not be members of the Ohio State Bar Association, one (1) from each district of the Ohio State Bar Association appointed by the Executive Committee of the Ohio State Bar Association. The term of office of each member of said Board of Commissioners shall be three years, beginning on January 1 next following his appointment, excepting that the members appointed for Districts 1, 4, 7, 10 and 13, to take office January 1, 1955, shall be appointed for terms of one year each, and the members appointed for Districts 2, 5, 8, 11 and 14, to take office January 1, 1956, shall be appointed for terms of two years each. Appointment to terms commencing January 1 of any year shall be made prior to the preceding December 1 the preceding years. Vacancies for any cause shall be forthwith filled by appointment for the unexpired term. Said Executive Committee shall each year designate one member as Chairman of said Board of Commissioners, and designate a Secretary, who may, but need not, be a member. All such appointments and designations shall be subject to the approval of this Court.

(2) From and after the effective date of this rule, all proceedings for the investigation of complaints and grievances involving alleged misconduct by attorneys and counselors-at-law and judges, all proceedings for the discipline of such attorneys and counselors-at-law and judges, and all proceedings for reinstatement as an attorney and counselor-at-law, shall be brought, conducted and disposed of in accordance with the provisions of this rule; provided, however, that nothing herein contained shall be construed to prevent any committee of any regularly organized local bar association or of the Ohio State Bar Association from investigating and reporting on any complaint filed with it, referred to it, considered by it, or coming to its attention.

(3) Misconduct, as the term is used herein, shall mean any violation of any provision of the oath of office taken upon admission to practice of law in this state, or any violation of the Canons of Professional Ethics or the Canons of Judicial Ethics as adopted by this Court from time to time, or the commission or conviction of a crime involving moral turpitude.

Disciplinary Procedure

(4) Each attorney and counselor-at-law or judge found guilty of misconduct shall be disciplined. The discipline of such persons shall be

(a) a permanent disbarment from the practice of law, or

(b) suspension for an indefinite period from the practice of law subject only to reinstatement as hereinafter provided, or

(c) a public reprimand, or

(d) a private reprimand.

A person disbarred or who shall voluntarily surrender his license to practice law shall never thereafter be readmitted to the practice of law in this state. A person who has been suspended for an indefinite period from the prac-

tice of law and thereafter reinstated shall be disbarred upon being found guilty of subsequent misconduct. A person who has been twice reprimanded for misconduct, either publicly or privately, upon being found guilty of subsequent misconduct, shall be suspended for an indefinite period from the practice of law or permanently disbarred, depending upon the seriousness of such misconduct.

(5) A complaint, as the term is used herein, shall mean a formal written complaint alleging misconduct of one, who shall be designated therein as The Respondent. Such complaint shall not be accepted for filing unless it is signed by one or more members of the Bar of Ohio in good standing (who shall be counsel for the Relator) and supported by a certificate in writing signed either by the Chairman of the Committee on Legal Ethics & Professional Conduct of the Ohio State Bar Association, or by the President, Secretary or Chairman of the Grievance Committee of any regularly organized local Bar Association in the State (which association shall be deemed the Relator) certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted the responsibility of prosecuting the complaint to conclusion. Such certification shall constitute a representation that, after investigation, the Relator believes reasonable cause exists to warrant a hearing on such complaint. The complaint may also, but need not, be signed by the person aggrieved.

All such complaints shall be filed in quadruplicate in the office of the Secretary of the Board of Commissioners. If said Board of Commissioners finds that the complaint, upon its face, does not charge misconduct as herein defined, such complaint shall be dismissed. Otherwise said Secretary forthwith shall cause a copy of such complaint to be sent by registered mail to the Respondent named therein with a

notice requiring him to file within twenty (20) days after the mailing of such notice his answer in quadruplicate, and serve copies thereupon upon counsel of record named in the complaint.

After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice, by a panel of commissioners appointed by the Chairman of said Board of Commissioners, who shall designate one member of such panel as Chairman of the panel. Such panel shall consist of three (3) commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes.

(6) If the panel finds that the charges in any complaint do not merit the taking of disciplinary action, the complaint shall be dismissed, and such dismissal shall be reported to the Secretary of the Board of Commissioners, who shall notify the respondent and all counsel of record of such action and shall notify the local bar association or associations of the county or counties in which the respondent resides and maintains his office, and of the county or counties from which the complaint arose, of such action.

If the panel finds and determines that the respondent is guilty of misconduct and that private reprimand should be administered, such panel shall administer such reprimand, and such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by such panel.

If the panel finds and determines that the Respondent is guilty of misconduct and that public reprimand, indefinite suspension, or permanent disbarment is merited, the panel shall make its certified report of the proceedings before it,

including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, with the Secretary of the Board of Commissioners.

Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the respondent is guilty of misconduct. If the Board of Commissioners determines that a private reprimand shall be administered it shall administer such private reprimand. If the complaint is dismissed, or a private reprimand is administered, such action shall be reported to the Secretary of the Board of Commissioners who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the panel that heard the matter.

If the Board of Commissioners determines that a public reprimand, suspension for an indefinite period from the practice of law or permanent disbarment is merited, said Board of Commissioners shall thereupon make a final certified report of such proceedings, including its findings of fact and recommendations, and shall file the same together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, in the office of the Clerk of this Court, and shall forthwith notify the Respondent and all counsel of record of such action, enclosing with such notice a copy of the findings of fact and recommendations and a copy of the statement of the actual and necessary expenses incurred.

Upon the filing of such final report of the Board of Commissioners, this Court will issue to the Respondent an order to show cause before this Court at a time to be specified not less than forty (40) days after the issuance of such order, why the report of said Board of Commissioners shall not be confirmed and a disciplinary order entered. Notice thereof shall be served by the Clerk of this Court upon the Respondent and all counsel of record, personally or by registered mail.

(7) At least twenty (20) days before the date for showing cause stated in the order of this Court, the respondent shall file, in the number and form required by rules of this Court for original actions, objections, setting forth the grounds thereof, to the findings or recommendations of the Board of Commissioners, and to the entry of a disciplinary order, or to the confirmation of the report upon which said order to show cause was issued, and a brief in support of such objections, together with proof of service of copies thereof upon the Secretary of the Board of Commissioners and upon all counsel of record for the Relator in the hearing before the Board of Commissioners.

Counsel for the relator before the Board of Commissioners shall file or cause to be filed in the number and form required by the rules of this Court for original actions, such briefs as are deemed necessary in answer to any brief filed by respondent, together with proof of service of copies thereof upon respondent or counsel of record for respondent. The same shall be filed within fifteen (15) days after the filing of Respondent's brief.

Extension of time for filing objections and briefs shall be governed by rules applicable to original actions.

Upon failure of Respondent to file objections with the time limited above, or after consideration of such objec-

tions and such briefs as may be filed for and against the same, and after hearing, if requested by this Court, this Court will enter such order upon the matter as it may find proper, which may include such provision for reimbursement of the actual and necessary expenses incurred by the Board of Commissioners in connection with said proceedings as the Court shall deem just. Upon the entry of any disciplinary order pursuant to this rule, the Clerk of the Court shall mail certified copies thereof to counsel of record, to the Board of Commissioners, to respondent, at his last known address, to the local bar association or associations in the county or counties in which the respondent resides and maintains his office, and the county or counties from which the complaint originated, to the presiding judge of the Court of Common Pleas for such county or counties, and to the presiding judge of the United States District Court having jurisdiction in such county or counties.

(8) Unless and until filed in the Supreme Court of Ohio, all proceedings and documents relating to complaints and hearings thereon and proceedings in connection therewith shall be private, unless the respondent shall request in writing that they be public.

Reinstatement

(9) No petition for reinstatement to the practice of law will be entertained by this Court, and the same may not be filed in this Court, within a period of two years after the entry of an order indefinitely suspending the petitioner from the practice of law in this state, or within a period of two years after the denial of a petition for reinstatement to the practice of law filed by such petitioner.

(10) Subject to the foregoing restrictions, any person who has been indefinitely suspended from the practice of law and who wishes to be reinstated may file his verified

petition and twenty (20) copies thereof with the Clerk of this Court, setting forth:

(a) the date when indefinite suspension was ordered, and if there was a reported opinion, the volume and page of the official reports of this Court where such opinion appears;

(b) the dates all such prior petitions for reinstatement were filed, were denied or granted;

(c) the name of all persons and organizations except the petitioner and the Board of Commissioners, who were, or would be, entitled, under these rules to receive from the Clerk of this Court certified copies of the disciplinary order of this Court against petitioner resulting in his suspension; and the name of the local bar association or associations, in the county in which he resides at the time of the filing of the petition and of each county in which he proposes to maintain an office if reinstated; and

(d) the facts upon which he relies to establish by clear and convincing proof that

(i) he has rehabilitated himself, and

(ii) he possesses all of the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission.

(11) Such petition shall be accompanied by a deposit in an amount to be fixed by the Clerk, for probable costs and expenses to be incurred in connection with said proceedings, which shall include any amounts unpaid under any prior order of this Court.

(12) No person shall be reinstated unless he has established by clear and convincing proof that:

(a) he has rehabilitated himself, and

(b) he possesses all of the qualifications, mental, educational and moral, which would have been a requirement

of an applicant for admission to the Bar of Ohio at the time of his original admission. In such case the order of reinstatement shall

(i) permit the applicant to take one of the regular bar examinations of the Supreme Court of Ohio, and

(ii) be conditional upon the applicant's subsequently taking and passing such examination and thereafter taking the prescribed oath of office.

(13) Unless denied forthwith for insufficiency in form or substance, the Clerk shall forward five (5) copies of the petition to the Secretary of the Board of Commissioners and such petition shall be deemed to be referred, without court order, to the Board of Commissioners to hold a hearing or hearings, and take and report evidence relevant to the rehabilitation of the petitioner and his possession of all of the qualifications, mental, educational and moral, required of an applicant for admission to the Bar of Ohio at the time of his original admission.

The Chairman of the Board of Commissioners shall appoint a hearing panel of three commissioners, no one of whom shall be a resident of the district in which the petitioner resides or of the district in which he resided at the time of his suspension, and said panel shall conduct a hearing or hearings upon such petition. Reasonable notice of any hearing shall be given to the petitioner or his counsel and to all persons or organizations referred to in section (12) (c) above. Such hearing shall be public if the petitioner so requests in writing, and may be public in the discretion of the hearing panel. Any interested person, any member of the Bar, and any representative of any local bar association, or of the Ohio State Bar Association, may appear before the hearing panel in support of or in opposition to the petition. The hearing panel will make and certify a report of the proceedings before it, including its

findings of fact and recommendations to the Board of Commissioners; and all proceedings before such panel and the Board of Commissioners shall, whenever appropriate, be governed by the provisions hereinbefore contained governing disciplinary proceedings, including proceedings in this Court on an issuance of an order to show cause why the final report of the Board of Commissioners should not be confirmed. If the final report should recommend denial of the petition, the petitioner shall have ten days from receipt of notice of the date of filing such report to file objections thereto and brief in support thereof, but no oral argument shall be heard thereon. The Court will thereupon enter an appropriate order, which may include such provision for reimbursement of the actual and necessary expenses incurred in connection with the proceedings as the Court shall deem just.

General Provisions

(14) Whenever provision is made for the service of any notice, order, report or other paper or copy thereof upon any respondent or petitioner in connection with any proceeding involving a complaint or a petition for reinstatement, service may be made upon counsel of record for such respondent or petitioner, either personally or by registered mail.

(15) A majority of the members of the Board of Commissioners or of a hearing panel shall constitute a quorum for all purposes and the action of a majority of those present comprising such quorum shall be the action of the Board of Commissioners or of such hearing panel.

(16) Any non-resident of this state, having been admitted as an attorney and counselor-at-law, by the rules of this Court, or any resident of this state, having been admitted as an attorney and counselor-at-law by the rules

of this Court, who subsequently becomes a non-resident or conceals his whereabouts, by such admission to the practice of law within this state, makes the Clerk of this Court his agent for the service of any notice provided for in any proceedings instituted before the Board of Commissioners against such attorney and counselor-at-law or judge, pursuant to this rule.

All such notices shall be served by the Secretary of the Board of Commissioners upon the Clerk of this Court by leaving at the office of said Clerk a true and attested copy of such notice and any accompanying document and by sending to the respondent, by registered mail, postage prepaid, return receipt requested, a like true and attested copy, with an endorsement thereon of the service upon said Clerk of this Court, addressed to such respondent at his last known address. The postmaster's receipt for the payment of such registered postage shall be attached to and made a part of the return of service of such notice by the Secretary. The panel or Board of Commissioners or Court before which there is pending any proceedings in which notice has been given as provided in this section may order such continuance as is necessary to afford the respondent reasonable opportunity to appear and defend.

The Clerk of this Court shall keep a record of the day and hour of the service upon him of such notice and any accompanying document, which shall not be a public record in the office of said Clerk.

(17) Each member of the Board of Commissioners shall have power to issue subpoenas and to cause testimony to be taken under oath. All such subpoenas shall be issued in the name and under the seal of this Court and shall be signed by a member of the Board of Commissioners.

Any member of the Board of Commissioners may order testimony of a witness to be taken by deposition within or

without this state in the manner prescribed for the taking of depositions in civil actions, and such depositions may be used to the same extent as permitted in civil actions.

That refusal or neglect of the person subpoenaed as a witness to obey a subpoena, to attend, to be sworn or to affirm, or to answer any proper question, shall be deemed to be contempt of this Court and shall be punishable accordingly.

All rules of evidence shall be observed in the conduct of all hearings, and the respondent may be represented by counsel, who shall enter formal appearance.

(18) The Secretary of the Board of Commissioners shall keep a docket of each complaint and of all proceedings thereon, which shall be retained permanently as a part of the records of his office.

(19) The Board of Commissioners may, subject to the approval of this Court, prescribe other rules and regulations not inconsistent herewith.

(20) The process and procedure under these rules and other regulations approved by this Court shall be a summary as reasonably may be. Amendments to any complaint, notice, answer, objection, report or order to show cause may be made at any time prior to final order of the Court. The party affected by such amendment shall be given reasonable opportunity to meet any new matter presented thereby. No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularity or for any error not resulting in a miscarriage of justice. These rules and such regulations relating to investigation and proceedings involving complaints of misconduct and petitions for reinstatement shall be liberally construed for the protection of the public, the courts and the legal profession and shall apply to all pending investi-

gations and complaints so far as may be practicable, and to all future investigations, complaints and petitions whether the conduct involved occurred prior or subsequent to the adoption of this rule. To the extent that application of these rules to such pending proceedings may not be practicable, the rules and regulations in force at the time these rules became effective shall continue to apply.